

CRTI (SEC) -103

**Judiciary and Important Legislatures
Effecting RTI**

School of Law



**UTTARAKHAND OPEN
UNIVERSITY**

Teen Pani Bypass Road, Near Transport
Nagar, Haldwani - 263139

Phone No- 05946 - 261122, 261123

Toll Free No. 18001804025

Fax No.- 05946-264232, Email-
info@uou.ac.in, <http://uou.ac.in>

Professor Girija Prasad Pande, *Director, School of Law,
Uttarakhand Open University, Haldwani, Nainital.*

Professor J.S.Bisht,
Faculty of Law,S.S.Jeena Campus,Almora,Kumaun University,Nainital, Uttarakhand.

Professor B.P.Maithani,
Former RTI Advisor.Goverment of Uttarakhand,Uttarakhand

Dr.Deepankur Joshi, Assistant Professor and Coordinator
School of Law, Uttarakhand Open University, Haldwani, (Nainital).

UNIT WRITING

| UNIT WRITERS | UNIT |
|--|------------------|
| [1] Dr.Razit Sharma, Assistant Professor, <i>Law College, Uttaranchal University Dehradun Uttarakhand</i> | Unit- 4,5,6 |
| [2] Dr.Sushim Shukla, Assistant Professor, <i>Law College, Uttaranchal University Dehradun Uttarakhand</i> | Unit- 7,8,9 |
| [3] Mr. Rajeev Bhatt, Advocate High Court of Uttarakhand,Nainital <i>Ex. RTI Advisor Kumaun University Nainital, Ex.Assistant Professor Unity Law College Rudrapur</i> | Unit- 10, 11, 12 |
| [4] Ms.Sapna Agarwal, Advocate High Court of Uttarakhand,Nainital | Unit-1,2,3 |

EDITOR

*Dr. Deepankur Joshi, Assistant Professor and Coordinator,
School of Law, Uttarakhand Open University, Haldwani, (Nainital)*

Copyright © Uttarakhand Open University, Haldwani, Nainital

Edition- 2024, Pre-Publication copy for Limited Circulation ISBN-

Publication- Directorate of Studies and Publication, Uttarakhand Open University, Haldwani, Nainital.

E- Mail: studies@uou.ac.in

CRTI (SEC) 103

Judiciary and Important Legislature Effecting RTI

INDEX

| S. NO. | UNIT | PAGE NO. |
|---------------|---|-----------------|
| 1 | JUDICIAL INTERPRETATION OF FREEDOM OF SPEECH AND EXPRESSION | 4 - 26 |
| 2 | OBSERVATION OF THE COURT REGARDING PROACTIVE DISCLOSURE OF INFORMATION | 27 - 50 |
| 3 | IMPORTANT JUDICIAL GUIDELINES ON GOOD GOVERNANCE, TRANSPARENCY AND DISCLOSURE | 51 - 79 |
| 4 | SUPREME COURT ON RIGHT TO INFORMATION | 80 - 91 |
| 5 | HIGH COURT ON RIGHT TO INFORMATION | 92 - 100 |
| 6 | OTHER IMPORTANT PRONOUNCEMENTS | 101 - 110 |
| 7 | THREATS TO THE LIFE OF RTI ACTIVISTS | 111 - 116 |
| 8 | SUPREME COURT GUIDELINES | 117 - 122 |
| 9 | LAWS PROTECTING THE RTI ACTIVISTS | 123 - 128 |
| 10 | OFFICIAL SECRETS ACT, 1923 | 129 - 138 |
| 11 | PUBLIC RECORDS ACT, 1993 | 139 - 145 |
| 12 | REPRESENTATION OF PEOPLES ACT, 1951 | 146 - 154 |

UNIT 1

JUDICIAL INTERPRETATION

OF FREEDOM OF SPEECH AND EXPRESSION

STRUCTURE

1.1 INTRODUCTION

1.2 OBJECTIVES

1.3 SUBJECT

1.3.1 FREEDOM OF SPEECH AND EXPRESSION

1.3.2 MEANING OF INTERPRETATION

1.3.2.1 FLAG HOSTING – FUNDAMENTAL RIGHT OF CITIZEN

1.3.2.2 RIGHT TO INFORMATION ACT, 2005

1.3.2.3 AMENDMENT IN ELECTORAL REFORMS LAW IS UNCONSTITUTIONAL

1.3.2.4 THE NATIONAL ANTHEM CASE

1.3.2.5 SCOPE OF FREEDOM OF SPEECH & EXPRESSION

1.3.2.6 FREEDOM OF PRESS

1.3.2.7 GOVERNMENT HAS NO MONOPOLY OVER ELECTRONIC MEDIA

1.3.2.8 NO BAN ON ANY PUBLICATION FOR THE FEAR OF DEFAMATION

1.3.2.9 PRE-CENSORSHIP

1.3.2.10 PRE-CENSORSHIP ON MOVIES

1.3.2.11 BAND AND HARTAL IS NOT A RIGHT UNDER ARTICLE 19(1)(A)

1.3.3 RESTRICTION ON THE FREEDOM OF SPEECH & EXPRESSION

1.3.3.1 TEST OF THE REASONABILITY OF RESTRICTIONS

1.3.3.2 THE GROUNDS OF RESTRICTION ON FREEDOM OF SPEECH AND EXPRESSION (ARTICLE 19(2))

1.3.3.2.1 SECURITY OF THE STATE

1.3.3.2.2 IN THE INTEREST OF FRIENDLY RELATIONS WITH FOREIGN STATES

1.3.3.2.3 IN THE INTEREST OF PUBLIC ORDER

1.3.3.2.4 IN THE INTEREST OF DECENCY OR MORALITY

1.3.3.2.5 CONTEMPT OF COURT

1.3.3.2.6 DEFAMATION

1.3.3.2.7 INCITEMENT TO A CRIME

1.3.3.2.8 SOVEREIGNTY AND INTEGRITY OF INDIA

1.4 SUMMARY

1.5 GLOSSARY

1.6 SAQS

1.7 REFERENCES

1.8 SUGGESTED READINGS

1.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1.10 ANSWER SAQS

1.1 INTRODUCTION

The constitution of India gives some fundamental rights to its citizens. Article 19(1)(a) of the Constitution confers upon all the citizens of India the fundamental right of freedom of speech and expression. Thinking is a basic and continuous process, which gives birth thoughts and new ideas. Without the freedom of speech and expression no one can tell about their thinking and thoughts and never convert them in to new ideas. As a result, there is no social, political and scientific progress in any society. Hence the freedom of speech and expression is vital and utmost necessity of a society. The freedom of speech and expression included many other freedoms, such as, freedom of writing, freedom of peaceful oppose, hosting national flag in private premises and many more, which the Supreme Court of India established in many of its decision.

On the other hand, it is proved that freedom without restrictions makes one a dictator. Hence, society or law decides the limit of everything. Keeping this fact in view, the prudent Constitution assembly made it clear that, while giving the freedom of speech, your limits begin where you interrupt the freedom of expression of others. It has been explained in Article 19 part (2) that freedom of expression is not restriction free. The Government of India may impose reasonable restriction on this freedom of expression in case of any danger over the Sovereignty and integrity, security, friendly relations with foreign states, Public order, decency, morality, incitement to an offence etc.

1.2 OBJECTIVES

After reading this unit you will be able to understand the following-

- About Article 19(1)(a), which confer the right of obstacle free speech and expression to the citizen of India;
- What are the grounds of restriction on the freedom of speech and expression;
- The inherent other rights, cover under the right of free speech and expression;

- Different cases of historical importance through which the supreme court of India interpretate the true meaning of freedom of speech and expression;
- Scope of freedom of speech and expression;
- Freedom of press;
- Right of bandh and hartal;
- Right to information also comes under the right of free speech and expression;

1.3 SUBJECT

1.3.1 FREEDOM OF SPEECH AND EXPRESSION

The citizens of India have been given the different rights relating to freedom in Article 19 under the Constitution of India. Article 19 confers upon the following six freedoms to all the citizens of India –

- a) to freedom of speech and expression
- b) to assemble peaceably and without arms
- c) to form associations or Unions
- d) to move freely throughout the territory of India
- e) to reside and settle in any part of the territory of India
- f) (Omitted by the 44th Constitution Act 1978; w.e.f. 20.6.1979)
- g) to practice any profession, or to carry on any occupation, trade or business.

The freedom of speech and expression is the foundation stone of any democratic system of governance. For the proper operation of a democratic government, it is not possible to develop the reasoning and criticizing power of the public without the freedom of speech.

Freedom of speech is also guaranteed by various international conventions like Universal Declaration of Human Rights, European convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights etc. These declarations expressly talk about protection of freedom of speech and expression. The preamble of the Indian constitution secure to all its citizen, liberty of thought and expression.¹ Article 19(1)(a) says, “all citizens shall have the right to freedom of speech and expression”

¹ See preamble, The Constitution of India

In the case of *Indian Express Newspapers Vs Union of India*² the Supreme Court stated that “Freedom of Expression” fulfills four special objects –

- (a) It is helpful in the self – progress of a person,
- (b) It helps in finding out the truth,
- (c) It enhances the capacity of decision making of a person, and
- (d) It helps to establish a reasonable adjustment in stability and during social change.

In the case of *Lavel Vs Griffin*³, the court stated while explaining the freedom of expression that, freedom of expression includes the expression of thoughts of someone through such medium by which he may communicate these to others. This includes the expression of thoughts with digits, symbols, indications etc.

In the case of *S.P. Gupta and others Vs President of India and others*⁴ the Supreme Court stated that the democratic government is an open government and the public has right to know about it.

In *Romesh Thapar Vs Madras State*⁵ the Supreme Court stated that the freedom of speech and expression includes the freedom of broadcasting of thoughts.

In *Shrinivas Vs Madras state*⁶ the court decided that the freedom of speech and expression is not limited up to the dissemination of our thoughts only. It comprises freedom of other people also, which is possible only by the freedom of press.

Only the citizens have the rights conferred by Article 19. The word ‘Citizen’ used in Article 19, makes it clear, that the freedoms conferred under Article 19, are not for any foreigner. Even a company is not a citizen, so that too cannot claim the rights conferred by Article 19.

However, the freedom given under article 19(1)(a) is not absolute. Restrictions may be imposed on it on the grounds described in Article 19(2).

1.3.1 MEANING OF INTERPRETATION

Interpretation means finding the true sense of a word, phrase or a provision. On the question of interpretation, the five Judge Bench of Supreme Court succinctly held thus: “What does

² (1985) 1 S.C.C. 641

³ (1983), 303 U.S. 444

⁴ A.I.R. 1992 S.C. 14

⁵ A.I.R. 1950 S.C. 124

⁶ A.I.R. 1951 Madras 79

interpretation of a provision mean? Interpretation is the method by which the true sense or the meaning of the word is understood.”⁷

In a series of cases and in a number of decisions the apex court decided true sense and meaning of the article 19(1)(a).

1.3.2.1 FLAG HOSTING – FUNDAMENTAL RIGHT OF CITIZEN

In the case of *Union of India Vs Naveen Jindal*⁸ the Supreme Court decided that flag hosting on one’s house is a fundamental right of every citizen under Article 19(1)(a), because by doing so, he expresses his emotions and faithfulness towards nation, but this right is not absolute and reasonable restrictions may be imposed on it under Article 19(2).

1.3.2.2 RIGHT TO INFORMATION ACT, 2005

‘Right to know’ is also included under the Article 19(1)(a).⁹ In a democratic system, Right to Information is very essential right so that every citizen may know about public Authorities and their functioning. On Dec. 05, 2002, the Act of the Freedom of Information was passed by the government of National Democratic Alliance. Having revoked this act, the existing Right to Information Act 2005 was passed in place of the previous one. The main object of this act, is to confer the citizens the right to know the information, regarding the official functioning of public authorities.

The Law, Official Secret Act enacted during the tenure of Lord Curzon, is one of the laws with the object of keeping the Government documents away from the public, to maintain the security and Unity of the country. But in practical, they intended to make every fact secret. That is why, people could not know the truth not only the personal matters, rather in public matters too.

Under the existing Act, it will be the responsibility of public officer, that he should provide the asked information to the citizens and keep the details of the documents, about the functioning of their office. The object of this act is to increase the openness, transparency and accountability is administration.¹⁰

According to Section 5, every public authority shall appoint as many central and state information officers, which are necessary, within the one hundred days of the implementation of this Act. These information officers will provide the information to the people who apply for it. According to Section 6¹¹, one who desires to have the information shall apply to Public Information Officer in writing or through electronic media, in Hindi or English. Having

⁷ *State of Jammu & Kashmir and others v. Thakur Gnaga Singh and another* [(1960) 2 SCR 346]

⁸ A.I.R. 2004 S.C. 1559

⁹ *S.P. Gupta and others vs. President of India and others*, A.I.R. 1932, SC 14; *India Express Newspapers vs. Indian Union*, (1985) SC 641;

¹⁰ Pandey, Dr. Jai Narayan, Constitution of India 44th Edition, Page 179

¹¹ Of RTI Act, 2005

received the application, the information officer shall reply as early as possible but within 30 days on the payment of prescribed fees or shall deny on the grounds prescribed under Section [8 and 9]¹². But where the information is related to the protection of life and freedom, it must be provided within 48 hours of receiving the application.

According to Section 12¹³, the person aggrieved by the decision of Public Information Officer shall be able to appeal within 30 days to the officer, as prescribed.

Section [12, 13 and 14]¹⁴ makes provisions regarding to constitution, service–conditions and dismissal of Central Information Commission. Under Section [15, 16 and 17]¹⁵, the provisions are given regarding the constitution, service–conditions and dismissal of state information commission. It is a provision under Section 20¹⁶, if information officers receive applications and do not reply without any reasonable grounds, within the provided time period, after expiry of that time they may be fined with Rs. 250/- Per day till they provide the asked information. They shall be fined by Central Information Commission.

Section 23¹⁷ provides that no suit can be filed in any court under this act, against any order.

This act shall not be applicable against intelligence and other agencies relating to security, which are specified by the Union Government in second schedule (Section 24)¹⁸.

The Supreme Court had explained the freedom of Press, under the freedom of expression under Article 19¹⁹ before RTI bill passed, but bureaucracy kept on obstructing its acceptance. By passing of this act, the freedom of Press also got legal strength.

1.3.2.3 AMENDMENT IN ELECTORAL REFORMS LAW IS UNCONSTITUTIONAL

Right to Information is a fundamental Right of voter under Article 19. The Supreme Court declared the disputed amendment in Electoral reforms law unconstitutional in the case of *People's Union for Civil Liberties Vs Union of India*²⁰. The three membered bench of Supreme Court (Justice M.V. Shah, Justice P.V. Reddy and Justice D.M. Dharmadhikari) stated in its decision that, the Right to information of Voter is an essential part of the fundamental right of Freedom of Expression conferred under Article 19, and the amendment made in Section 33 of Public Representation Act diminishes it. Hence aforesaid amendment is unconstitutional. After

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Of the Indian Constitution

²⁰ A.I.R. 2004 S.C. 2112

this decision, it has become necessary for the candidates to furnish the following information while filling the nomination²¹ –

1. Has the candidate been convicted in any criminal case ever before, acquitted or released. If it is so, has he been fined or sentenced?
2. Before six months of filling the nomination paper, if the candidate involved in a pending case of such crime in which there is a provision for the imprisonment for two years or more and in which allegations have been fixed or the cognizance is taken by court. If so, it is necessary to giving details.
3. Assets, moving or fixed, bank balance etc. belong to the candidate's wife/husband and dependents.
4. Liabilities of the candidate, if any and especially to any public undertaking or financial institute or to the government etc.
5. Educational qualification of the candidate.

According to the amendment made in section 33 of Public Representation Act, it was not necessary for the candidate to furnish, this information to any court or to Election Commission. Justice Shah stated the “Right to vote is meaningless unless the citizens have no knowledge of the past of their candidate”.

1.3.2.4 THE NATIONAL ANTHEM CASE

In the case of *Emanuel Vs Kerala State*¹⁰²², (Case of National Anthem), the Supreme Court has decided that any person cannot be compelled to sing the National Anthem, if his religious faith does not permit to do so. In this case a few students of ‘Jehobaj vitnes’ community of Christian society were expelled because they refused to sing the National Anthem. They stood up respectfully but they did not sing. They filed a petition against expulsion in the High Court of Kerala, who dismissed their petition. The Supreme Court changed the decision of the High Court and decided that there is no law, under which they may be compelled to sing the national Anthem. The order of expulsion infringes the right of freedom of speech and expression conferred in Article 19(1)(a) hence illegal. Right to remaining silent is also vested in Article 19(1)(a).

Since this decision may be dangerous to the Unity and integrity of the nation, hence keeping this in view, Government has filed a review petition against this decision.

1.3.2.5 SCOPE OF FREEDOM OF SPEECH & EXPRESSION

²¹ Pandey, Dr. Jai Narayan, Constitution of India 44th Edition, Page 180

²² (1986) 3 S.C.C. 615

The Right of Freedom of Speech & Expression cannot be bound in any geographical territories. To prevent this right of any person on the basis of the borders of a Country shall be the encroachment of Article 19. In modern time, while the conception of Globalization prevails, the freedom of speech and expression cannot be limited by the boundary of a Country. In the case of *Menka Gandhi Vs Union of India*²³ the Court stated that expression means the exchange of thoughts with a person, where so ever he/she lives in the world. The Supreme Court stated although the right to travel the foreign Country is not a fundamental right under Article 19, but if restricted, has direct impact on the rights under Article 19, it may be deemed the encroachment of Article 19 and it shall depend on facts and circumstances.

1.3.2.6 FREEDOM OF PRESS

The freedom of press is necessary for political freedom and for the success of democracy. Newspaper is an important means to express the thoughts. Press Commission of America has expressed the following thoughts regarding the importance of the freedom of press – “The freedom of press is necessary for the political freedom. The society in which a person is not free to communicate his thoughts to others, others freedom cannot be safe in that society. In fact, a free society begins only where there is freedom of speech and all the means to maintain the freedom exist. Hence, Freedom of Speech has a unique place among freedom”.

There is no any clear provision for the freedom of press in Indian Constitution like the Constitution of America. Dr. Ambedkar said in Constituent Assembly, while explaining the causes of it, that the press does not have any such rights, which cannot be conferred to an ordinary citizen. The editors or managers use their right of expression through newspaper. Hence, there is no need of any specific provision in Constitution.

Supreme Court has decided it in the case of *Saakal Papers Ltd. Vs Union of India*²⁴, that newspapers are the means to express thoughts, so the freedom of speech and expression includes the freedom of press too.

In the case of *Prabhu Dutt Vs Union of India*²⁵, it has been determined that the right to know the information and news is also included in the freedom of press. But freedom to know of press does not impose any legal duty on any person to give information to the press. The press can know the information only when citizens want to tell anything on their own.

In the case of *State Vs Charulata Joshi*²⁶ the Supreme Court decided that Press has no absolute right to interview the under trial prisoner in jail.

²³ A.I.R. 1979 S.C. 597

²⁴ A.I.R. 1962 S.C. 305

²⁵ A.I.R. 1982 S.C. 6

²⁶ A.I.R. 1999 S.C. 1379

In the case of *M. Hasan Vs Government of Andhra Pradesh*¹²⁷, the plaintiffs challenged the legality of the order passed by the Director – General (Jails) under which the interview of two prisoners of death sentence was denied. The officers told many causes of this denial. The Court decided that as the aforesaid causes are not prescribed in the specified restrictions under Article 19(2), hence, to prevent the prisoners from interview is the contravention of the right of freedom of expression under Article 19(1)(a).

In an important decision²⁸, the Supreme Court has decided that the freedom of Press is higher than that of other freedoms. Hence the criteria to test legality of laws under which the taxes are levied on them should be separate then the other tax laws.

In the case of *Hamdard Davakhana Vs Union of India*²⁹ the Government passed ‘Medicine and Magical-Treatment (objectionable Advertisement) Act’. The object of the act was to control the advertisement of medicines, to forbid the advertisements of medicines with hyperbolic admiration to cure the different ailments. The objection was raised against the advertisement on the grounds that the prohibition on the advertisements is the prohibition on the freedom of speech. The Supreme Court observed by declaring the act legal, that advertisements being a medium of expression, every advertisement is not related to the freedom of speech and expression. In the present case the advertisement is purely related to trade and commerce, not to the dissemination of thoughts.

In the case of *Tata Press Ltd. Vs Mahanagar Telephone Nigam Ltd*³⁰, the Supreme Court has confined the decision and has decided that “The Commercial Speech (Advertisement) is a form of freedom of speech and expression under Article 19(1)(a) and it can be restricted only under the grounds given in Article 19(1)(a). Advertisements are the important part of our economy. The exchange of commercial information is necessary in a democratic economic system. The economy may be disabled without it. Hence, any cut or control imposed on the broadcast or publication of advertisements affect the fundamental rights conferred to under Article 19(1)(a). The decision in the case of *Hamdard Davakhana*³¹ shall be applied only to those cases, where such a commodity is advertised, which is harmful to society.

Advertisement is the life of free Press. Advertisement is an important gratuity for a democratic Press. Freedom of Press is subordinated to the laws regulating the industrial relations. Press is also a factory, hence such law, which are enacted with the view to improve the conditions of labourers and parties working in it, do not contravene the Article 19(1)(a). The Working

²⁷ A.I.R. 1998 Andhra Pradesh (whole bench)

²⁸ (1994) 2 S.C.C. 434

²⁹ A.I.R. 1960 S.C. 554

³⁰ (1995) 5 S.C.C. 138

³¹ A.I.R. 1960 S.C. 554

Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 is passed specially to improve the service–conditions of employees and journalists working in press–factories. It provides for their gratuity, working period and wages etc. Supreme Court has declared this act constitutional³².

Freedom of Press is subordinated to Parliamentary privileges. In the case of *Search Light*³³, the Supreme Court has decided that no newspaper can publish that part of speech delivered by any member in Legislative Assembly, which has been removed from the proceedings by the order of Speaker.

1.3.2.7 GOVERNMENT HAS NO MONOPOLY OVER ELECTRONIC MEDIA

In the case of *Secretary Ministry of Information and Broadcasting Vs Cricket Association of West Bengal*³⁴, the Supreme Court has decided that the game of Cricket is a medium of expression, and subjects to the Freedom of Speech and Expression of Article 19(1)(a). This right also includes the broadcasting of matches through the electronic media. The Government has got no monopoly over the broadcasting of matches. This is right of the organizers of matches which cannot be interrupted. The right can be restricted only under the grounds prescribed in Article 19(2). The Court said that electronic media is very effective medium of television and radio communication. Air waves are public property and should be used for public benefits. It can be restricted on the grounds described under Article 19(2). Government can regulate them by law. The government should establish representatives of all the classes of society, who regulate the control and use of Article 19(2) does not confers the power to government to create monopoly in these matters. The interpretation of Section 4 of Telegraph Act should be according to Article 19(1)(a).

The aforesaid decision of Supreme Court is very important decision, because it releases electronic media, Doordarshan and radio from government control. The expression of free and fearless expression of thoughts, is the foundation stone of democracy. The Supreme Court decided in the suit, *Tata Press Ltd. Vs Mahanagar Telephone Ltd.*³⁵, that ‘Commercial Speech’ (Advertisement) is a form of freedom of speech under Article 19(1)(a). The broadcasting of commercial news/information is necessary in a democracy. It is necessary for the economy of the country. It can be restricted only on the grounds prescribed under Article 19(2).

³² *Express newspapers Vs Union of India*, A.I.R. 1958 S.C. 578

³³ *Sharma M&M Vs Shrikrishna Sinha*, A.I.R. 1959 S.C. 395

³⁴ (1995) 2 S.C.C. 161

³⁵ (1995) 5 S.C.C. 138

1.3.2.8 NO BAN ON ANY PUBLICATION FOR THE FEAR OF DEFAMATION

In the case of, *Rajgopal Vs Tamilnadu State*³⁶ (The case of Auto Shanker) in its decision of historical importance, the Supreme Court has decided in the context of freedom of press that Government has no power to impose pre-censorship to prevent the publication of any material which may defame the officers. Public officers or their associates, who have a doubt of being defamed on the publication of such material, that they could not stop such publication, but to prove that publication was based on false facts, they can take action for compensation and against defamation caused by such publication. The Court said that if the publication is based on any public document along with some court document, no action may take against press.

The court said that only Judiciary, Parliament and Legislature are exempted from this rule, because Judiciary has got a right to punish for its contempt and rest of the two have been protected by the given privileges subject to Article 105 and 194. But government, local officers and other parts, and the organizations, who use the government powers, they cannot file a suit for compensation caused by defamation. The court decided that there is an exception in the interest of morality i.e. the convicts of rape, sexual violence, kidnap or the women convicted of such crimes, their names must not be published. The court decided that the plaintiff has a right to publish the biography of Auto Shanker, as it seems by public documents, even without his permission. But if they cross the limits, they attack his right of privacy, they shall be accountable for the results. The decision of Supreme Court shall help sufficiently to empower the democracy and rule of law. The free press has an important role to play to fight against corruption prevailing in the society. Even if Indian press does not play his role fearlessly, it shall be its failure.³⁷

1.3.2.9 PRE-CENSORSHIP

The question of constitutional validity of Pre-Censorship first time came before the Supreme Court in the case of *Braj Bhushan Vs Delhi State*³⁸, in the case, The Chief Commissioner of Delhi issued an order against a weekly newspaper of Delhi under section 7 of East Punjab Public Safety Act, 1947, according to which, they will send the material which is not received from government agencies, for government examination, before publishing, and shall publish it after getting the pre-consent. The Supreme Court declared the aforesaid decision unconstitutional. The court said that to impose Pre-Censorship on any newspaper is improper restriction. In another case of *Virendra Vs Punjab State*³⁹, the Supreme Court has decided that to prevent some newspaper from expression and publishing its thoughts over some important issue of the time, is a serious encroachment in the freedom of speech and expression. In the

³⁶ (1994) 6 S.C.C. 632

³⁷ Pandey, Dr. Jai Narayan, Constitution of India 44th Edition, Page 192

³⁸ A.I.R. 1950 S.C. 129

³⁹ A.I.R. 1957 S.C. 896

case of *Express Newspapers Vs Union of India*⁴⁰ the Supreme Court has decided that any such law which imposes Pre-Censorship over newspapers or reduces its circulation or stops its beginning or make government aid necessary for them, encroaches the freedom conferred under Article 19(1)(a), hence invalid.

In the case of *Romesh Thapar Vs Madras State*⁴¹, the court declared that, the law by which the circulation of a magazine in a state was banned was invalid. In the case of *Bannet Coleman & Co. Ltd. Vs Union of India*⁴² the validity of the newspaper's paper policy of 1972-73 and Newspaper's Paper Control Order of 1962 were challenged, because under the Newspaper paper policy the maximum number of pages was confined to 10, and common ownership unit had no permission to exchange their authorized quota. It was challenged on the grounds of encroachment of Article 19(1)(a) and Article 14 of Constitution. The reason was given by government that the newspaper paper policy is meant to develop the small newspapers and to stop the monopoly of the organizations of big newspapers. The object of enactment of this law is to regulate the import and distribution of newspaper paper, though the consequential result is less circulation of newspapers. The fundamental right of press shall not diminish by consequential effect. The Supreme Court declared the newspaper paper policy unconstitutional. The Court said that freedom of press is a necessary part of Freedom of Speech and expression conferred under Article 19(1)(a). Press has a right to operate without any Pre-Censorship and without any restriction. The paper policy is not a reasonable restriction within the circumference of Article 19(1). This policy diminishes the fundamental right of freedom of speech and expression. They have not been given the right to increase the number of papers. Common ownership unit cannot start new editions or newspapers. The government has tried to control the development and operation of newspapers under the cover of distribution of newspaper. The freedom of press is of two types- Qualitative and quantitative. Which is vested in inclusive material and operation both. The court said that advertisement is main source of income for press. A cut in the number of pages not only will reduce the income of newspapers but the circulation also goes down, because the space for desired news and thoughts for the readers will be less which will restrict the freedom of expression.

1.3.2.10 PRE-CENSORSHIP ON MOVIES

In the case of *K.A. Abbas Vs Union of India*⁴³ first time the question of Pre-Censorship on movies appeared for consideration before the Supreme Court. In this case, the constitutional validity of Section 5(B)(2) of Cinema Act 1952, was challenged. This section authorizes the Union Government to prescribe such principles for the guidance of those officers who are to

⁴⁰ A.I.R. 1958 S.C. 578

⁴¹ A.I.R. 1950 S.C. 129

⁴² 1973 AIR 106

⁴³ A.I.R. 1971 S.C. 481

certify the movies to which they consider proper. The plaintiff stated that this is the encroachment of the freedom of speech and expression because other means of expression are not restricted like this. Supreme Court Decided that Pre Censorship on movies is constitutional under Article 19(1)(a)(b). The Pre Censorship on making and showing of movies is in public interest. Pre Censorship on movies is also constitutional in America⁴⁴.

In another case, the plaintiff had made a movie on Bhopal Gas Tragedy titled “Manav Vadh Se Pare”. The film got Golden Lotus Award for the best movie of 1987. The information Broadcasting Minister declared the awarded movies shall be broadcasted on television. But when it was sent for broadcasting, Doordarshan denied to broadcast it on many grounds saying the movie has been old, its utility has finished, it needs renewal, it is not proper and settled, political parties have raised many questions against it, and the question of compensation is in the court. When a petition was filed against the decision of Doordarshan in High Court. High court ordered to broadcast the movie. Doordarshan filed an appeal in the Supreme Court, decided that, defendant has got fundamental right of broadcasting his movie under Article 19(1)(a) and Doordarshan had contravened this right by not broadcasting this movie. Subjected to this right, every citizen has a right to expand his/her thoughts through newspapers, magazines and movies. There was no cause for the denial of the broadcasting this movie, except the criticism of the government. The Pre-Censorship on movies is Constitutional, but it must be exercised under the prescribed limits of Article 19(2) and under section 3(b) of Cinema Act, that means the restriction must be exercised on solid grounds. It must be reasonable under Article 14 too.

1.3.2.11 BAND AND HARTAL IS NOT A RIGHT UNDER ARTICLE 19(1)(A)

In the case of *Communist Party of India (Marxist) Vs Bharat Kumar and others*⁴⁵, three membered Bench of Supreme Court in a decision of historical importance, stated that to summon Band by political parties is unconstitutional and invalid. The court said that the difference between ‘Band’ and ‘Hartal’ told by Kerala High Court is right and there is no need to interfere. High Court differentiated between ‘Band’ and ‘Hartal’ on the grounds of the effect caused by these (Band and Hartal) and said that Band causes adverse effect on the fundamental rights of citizens and they are depriving of exercising these rights, while Hartal has no such effect. In the aforesaid case, two citizens of Kerala Chamber of Commerce, having filed a writ under Article 226 before the High Court, requested to declare the summoning and organizing Band by political parties, unconstitutional and to stop these, because these (Band and Hartal) caused encroachment in their fundamental rights conferred to under Article 19(1)(a) and under Article 21. Communist Party said that to summon a band is basic right of a political party under Article 19(1)(a). The Kerala High Court decided that while summoning a band, citizens are

⁴⁴ U. M. Paramount Pictures, 334, U.S. Page 181

⁴⁵ A.I.R. 1998 S.C. 184

directly or indirectly are threatened to stop all their activities and professions, confine themselves in their homes unless they will face dire consequences. A psychological fear prevails over citizens, because of which they are deprived of exercising their fundamental rights.

The Supreme Court decided that no political party or organization can claim to paralyze the industry & commerce throughout the country, and cannot stop those who are not agree with them, from exercising their fundamental rights or to discharge their duty towards state. The matter, being related to fundamental rights, the court is sufficiently authorized to confer declarative remedy to the plaintiffs. No step was taken to prevent Band by the State. Keeping this in view, the court said that the court has sufficient authority to declare the Summon and organizing Band unconstitutional, because Band is not in the interest of Nation and it obstructs the progress of Nation. The court declared that-⁴⁶

“We cannot ignore the destruction of public and private property during Band summoned by political parties or organizations. We are of the opinion that these political parties or organizations, who summon or organize such band, are accountable to compensate for such losses to the citizens. The state cannot be exempted from taking steps to compensate the losses caused on this account.”

Demonstration or Dharna–demonstration are also the means of expression. In the case of *Kameshwar Singh Vs Bihar State*⁴⁷ the court decided that peaceful demonstration or Dharna-demonstration have got protection under Article 19(1)(a) but not violent and undisciplined.

The right to Hartal is not a fundamental right under Article 19(1)(a), so no individual has an unrestricted right to Hartal. He/she can be prevented from doing so. When a demonstration takes a form of Hartal, it does not remain merely a means to express thoughts.⁴⁸

The right to Hartal is not a fundamental right under Article 19(1)(a), so no individual has an unrestricted right to Hartal. He/she can be prevented from doing so. When a demonstration takes a form of Hartal, it does not remain merely a means to express thoughts.⁴⁹

1.3.3 RESTRICTION ON THE FREEDOM OF SPEECH & EXPRESSION

In the case of *A.K. Gopalan*⁵⁰, Justice Patanjali Shastri said, “Being a thoughtful person, man desires to do many things, but he is bound to control his desires, and respect others. Keeping

⁴⁶ Pandey, Dr. Jai Narayan, Constitution of India 44th Edition, Page 193

⁴⁷ A.I.R. 1972 S.C. 1164

⁴⁸ *O. K. Ghosh Vs E. X. Joseph*, A.I.R. 1973 S.C. 812 and *Radhey Shyam Vs P.M.G. Nagpur*, A.I.R. 1965 S.C. 311

⁴⁹ *O. K. Ghosh Vs E. X. Joseph*, A.I.R. 1973 S.C. 812 and *Radhey Shyam Vs P.M.G. Nagpur*, A.I.R. 1965 S.C. 311

⁵⁰ A.I.R. 1951 S.C. 27

this in view, under clause (2) of Article 19, the state is empowered to apply reasonable restrictions, for the security of sovereignty and integrity of India, public order and decency". For reasonable restriction, it is necessary that-

- (a) Restrictions can be imposed only on the grounds given under section (2) of Article 19, and
- (b) Restrictions must be reasonable.

1.3.3.1 TEST OF THE REASONABILITY OF RESTRICTIONS

It is the court who decide whether the restriction is reasonable or not. Under this the power of review is very vast. By many decisions, the Supreme Court has established many rules and on the basis of which, reasonability of restrictions is examined. It is court, not the legislature, who has the power to decide finally, whether the restriction is reasonable or not.⁵¹ There should be a reasonable relation between the restriction imposed and the purpose to which legislature wants to acquire by making it a law. In case of autocratic and more than needed restrictions, law may be declared invalid. The determination of reasonability may be decided on the grounds of facts of every case. There is no any standard parameter for it. The restriction must be reasonable from both point of view i.e. original and procedural method⁵². The restriction imposed to achieve the objects vested in the directive principles of state policy, may be pass the test of the reasonability⁵³. The courts should adopt objective approach not individualistic, to decide the reasonability of restrictions. The restriction on freedom of speech and expression can be imposed on the grounds under section 2 of Article 19, not on any other grounds⁵⁴. The courts can decide the reasonability of restrictions only. It is not the work of courts to decide the reasonability of Law⁵⁵.

1.3.3.2 THE GROUNDS OF RESTRICTION ON FREEDOM OF SPEECH AND EXPRESSION (ARTICLE 19(2))

The freedom given under article 19(1)(a) is not absolute. Restrictions may be imposed on the freedom of speech and expression the following grounds described in Article 19(2) :-

- 1) Security of the state
- 2) In the interest of friendly relations with foreign states.
- 3) Public order

⁵¹ *Chintamani Rao Vs Madhya Pradesh*, A.I.R. 1951 S.C. 118

⁵² *Dr. Khare Vs. Punjab State*, A.I.R. 1950 S.C. 211

⁵³ *Bombay State Vs Balsara*, A.I.R. 1951 S.C. 318

⁵⁴ *Romesh Thappar Vs Madras State*, A.I.R. 1951 S.C. 124

⁵⁵ *N. B. Khare Vs Delhi State*, A.I.R. 1950 S.C. 211

- 4) In the interest of Decency and Morality
- 5) Contempt of court
- 6) Defamation
- 7) In the case of an incitement to a crime
- 8) The sovereignty and integrity of India.

1.3.3.2.1 SECURITY OF THE STATE

The security of state is on the top. In the interest of the security of state, reasonable restrictions may be imposed on the freedom of speech and expression of the citizens. The term 'Security of State' shows the distorted form of Public order, as – internal unrest or coup, to start a war against state etc. Such speeches or expression, which incite or encourage violent crimes like murder shall be deemed dangerous to the security of state. When these are doubted to be fatal to the security of state, only then the freedom of speech and expression of citizens may be restricted⁵⁶.

1.3.3.2.2 IN THE INTEREST OF FRIENDLY RELATIONS WITH FOREIGN STATES

The grounds for restriction has been added to Article 19(2) by the first Amendment Act, 1951 of Constitution. For the purpose of constitution, the members of commonwealth are not included in 'foreign state'. Pakistan is the member of commonwealth, so for this purpose the freedom of speech and expression cannot be restricted that it is adverse to Pakistan or other commonwealth countries⁵⁷.

1.3.3.2.3 IN THE INTEREST OF PUBLIC ORDER

In the suit *Romesh Thappar Vs Madras State*⁵⁸ it was decided that an ordinary breach of public order is not the grounds of imposing restriction on freedom of speech and expression. Public order means that peaceful arrangement which exists due to some enforced internal regulation among the member of political society. 'Public Order' is a term of very extensive meaning. To emancipate the effect of this decision, this word was added to Article 19(2) by First Constitution Amendment 1951. In the case of *Babu Lal Parate Vs Maharashtra State*⁵⁹, Supreme Court decided that clause 144 of Criminal Procedure Code, which empowers Magistrates to restrict processions and meetings in advance, does not encroach Article 19(1)(a), because the

⁵⁶ *Bihar State Vs Shail bala*, A.I.R. 1952 S.C. 329

⁵⁷ *Jagannath Vs. Union of India*, A.I.R. 1960 S.C. 625;

⁵⁸ A.I.R. 1951 S.C. 124;

⁵⁹ A.I.R. 1961 S.C. 884

orders issued under it are temporary by nature. Like this, government can take action in advance to maintain public order.

1.3.3.2.4 IN THE INTEREST OF DECENCY OR MORALITY

Clause 292 to 294 of India Penal Code makes provision to restrict the freedom of speech and expression in the interest of decency and morality. These clauses prohibit to sell, propagate or exhibit the porn material, perform indecent acts, indecent songs or indecent speeches etc. at public place. Government can restrict such statements or publications, which adversely affect the public morality or decency under Article 19(2). The definition of these terms, morality and decency, neither given in constitution nor in any act. Definition given in an English case, *R. Vs Hiklin*⁶⁰, is adopted by Indian Courts. In the aforesaid case, the court has defined ‘indecent’ as follows:- “Such statements and publications are generally deemed indecent, which create indecent and corrupt thoughts in the minds of those, who get these. The level of morality is liable to change time to time and place to place. A certain parameter/standard cannot be determined of it.”

1.3.3.2.5 CONTEMPT OF COURT

No definition of contempt of court is given in constitution. According to clause (2) of Contempt of Court Act, 1971, both civil and criminal contempt are included under ‘Contempt of Court’. ‘Civil Contempt’ means to defy deliberately the decisions, decree, direction, order, writ of court or the defiance of and procedure of court or to breach any promise deliberately, made to court. ‘Criminal Contempt’ means such statements, (whether these are oral or written or by any means) which is intended to the censure of judges or courts, or intended to diminish the authority or which imposes the allegation of partiality or interferes the work of judicial administration or has the intention of interferences or creates hindrances in the work or has the intention to do so. But following actions are not included under contempt of court –

- a) Innocent publication and its detail.
- b) Proper and correct publication of judicial proceeding/Actions.
- c) Proper criticism of judicial action.
- d) An honest complaint against judges.
- e) Correct publication of judicial proceedings.

According to the Act, a monetary fine worth Rs. 200/- or imprisonment for 6 months or both can be given for the contempt of court. Under the act, even the judges, magistrates or the

⁶⁰ (1868) L.R. 3 Q.B. 360

persons doing judicial functions can also be punished as general public even in their own courts for contempt.

1.3.3.2.6 DEFAMATION

Clause 499 of Indian Penal Code is related to defamation. Any such statement or publication, which injures the prestige of any person, is called defamation. The publication of any such statement by which a person becomes a center of hatred, laughter or contempt in the society. Such statements or publications can be restricted reasonably under Article 19(2). The courts have decided in different suits, that this clause reasonably restricts the freedom of speech and expression.

1.3.3.2.7 INCITEMENT TO A CRIME

This ground was added to Article 19(2) by First Amendment Act, 1951. What is comprised in the word 'Incitement' shall be determined by the courts on the grounds of facts and circumstances in each and every case. The speeches inciting the crimes may be stopped and punished by law.

1.3.3.2.8 SOVEREIGNTY AND INTEGRITY OF INDIA

This ground was added to Article 19(2) by the Sixteenth Amendment Act, 1963 of constitution. On this ground, if there is any threat to the sovereignty and integrity of India, the publication of statements inciting to any territory of India to be detached from the Union may be restricted.

1.4 SUMMARY

Different fundamental rights have been conferred to the citizens of India under Constitution of India. The foundation stone of any democratic system is the freedom of speech and expression for the proper functioning of a democratic government, the reasoning and criticizing powers of citizens, is needed, which cannot be developed without freedom of speech. Free expansion of thoughts is the main object of this freedom. It may be done by speeches or newspapers. The word 'Citizen' used in Article 19 clarifies it that the freedoms conferred to under this Article are not for any foreigner. Likewise, a company too, is not a citizen, it also cannot claim the rights conferred to under Article 19.

The freedom of expression comprises the freedom of press too. In the case of *Indian Express Newspapers Vs Union of India*⁶¹, the court has stated that freedom of expression fulfills four special purposes viz. the self-progress of man, discovery of truth, strengthens the decision – making and helps in establishing a reasonable adjustment at the time of social change. The freedom of press is necessary for the success of political freedom and democracy.

⁶¹ (1985) 1 S.C.C. 641

Among the conception of globalization freedom of speech and expression cannot be confined to the boundary of a country. In the case of *Menka Gandhi Vs Union of India*⁶², the court decided that expression means to exchange thoughts with a person, where so ever he lives in the world.

The right to information is a very necessary right in a democratic system so that every citizen may know how the government functions are being done by the authorities. Right to Information Act, 2005 was passed with the object of, to confer a right to citizens to know the information with the public authorities related to government's function.

The court has decided in the case, *Tata Press Ltd. Vs Mahanagar Telephone Nigam Ltd.*⁶³, that Commercial speech (Advertisement) is a form of the freedom of speech and expression under Article 19(1)(a), and it can be restricted only on the grounds prescribed in Section 2 of Article 19.

Press is also a factory, hence the laws which are enacted to improve the conditions of laborers and parties working in it, do not contravene Article 19(1)(a). To prevent any newspaper from expressing its view on the immediate important issue is a serious encroachment on freedom of speech and expression. In the suit, *Express Newspapers Vs Union of India*⁶⁴, Supreme Court decided that any such law that imposes Pre-Censorship on newspapers or reduces its circulation, or stops its beginning or makes the government aid necessary, is invalid.

The three membered Bench of Supreme Court, decided in the suit, *Communist Party of India (Marxist) Vs Bharat Kumar and others*⁶⁵ that to organize Band by political parties is invalid and unconstitutional. Band adversely affect the fundamental rights of citizens and they are deprived of exercising their fundamental rights, while hartal does not affects like this.

Demonstration and Dharnas are also the means of expressions. In the case of *Kameshwar Singh Vs Bihar State*⁶⁶, the court decided that peaceful demonstration or dharna is protected under Article 19(1)(a) not the violent and undisciplined.

In the case of *A. K. Gopalan*⁶⁷, Justice Patanjali Shastree said, "Being a thoughtful person, human desires to do many things, but he is bound to control his many desires and he is bound to respect others. Keeping this in view, subjected to clause (2) to (6) under Article 19, the state is empowered to impose reasonable restrictions for the protection of sovereignty and integrity of India, public order and decency etc."

⁶² A.I.R. 1979 S.C. 597

⁶³ (1995) 5 S.C.C. 138

⁶⁴ A.I.R. 1958 S.C. 578

⁶⁵ A.I.R. 1998 S.C. 184

⁶⁶ A.I.R. 1972 S.C. 1164

⁶⁷ A.I.R. 1951 S.C. 27

1.5 GLOSSARY

ABSOLUTE – Without any prevention/restriction

FUNDAMENTAL RIGHTS – There are the basic rights, which are not only necessary but indispensable for the mental, moral and spiritual development.

RESTRICTION – To prevent

REASONABLE – Which has proper ground.

1.6 SAQS

I. TICK (✓) THE CORRECT ANSWER

1. The restrictions are imposed on freedom of speech and expression under the following Article -
 - a) 19(1)
 - b) 19(1)(a)
 - c) 19(2)
 - d) 19(2) to (6)
2. Which of the following have the fundamental right of freedom of speech and expression-
 - a) Citizens
 - b) Legal Personality
 - c) Citizens and non-citizens both.
 - d) A company
3. To emancipate the effect of the decision of the suit *Romesh Thappar Vs Madras State* A.I.R. 1951 S.C. 124; following term was added to Article 19(2) -
 - a) In the interest of friendly relations with foreign states.
 - b) Public order
 - c) Incitement to a crime
 - d) Sovereignty and integrity of India

4. The following terms/terminology were added to Article 19(2) by the First Amendment Act 1951 of Constitution -
 - a) In the interest of friendly relation with foreign states
 - b) Public order
 - c) Incitement to a crime
 - d) All of the above

5. Freedom of speech and expression cannot be confined within the territories of a country. Expression means the exchange of thoughts with a person, where so ever he lives, the aforesaid principle is rendered in the following suit -
 - a) *Menka Gandhi Vs Union of India*, A.I.R. 1979 S.C. 597
 - b) *Romesh Thapar Vs Madras State*, A.I.R. 1950 S.C. 129
 - c) *Naveen Jindal Vs Union of India*, A.I.R. 2004 S.C. 1559
 - d) *Express Newspapers Vs Union of India*, A.I.R. 1958 S.C. 578

6. It was decided in the case of *Communist Party of India(Marxist) Vs Bharat Kumar*, A.I.R. 1998 S.C. 184 and others that -
 - a) The bandh summoned and organized by political party is invalid and unconstitutional
 - b) The summon of bandh by political parties is a fundamental right under Article 19(1)(a).
 - c) The court clarified the difference between bandh and hartal
 - d) 'a' and 'c' both

7. Which of the following statement is true?
 - a) The right to hartal is a fundamental right under Article 19(1)(a)
 - b) Commercial speech (advertisement) is a form of speech and expression
 - c) Newspapers have freedom to publicize every action/proceeding of legislature
 - d) The freedom of press is subjected to Pre-Censorship

8. Which of the following statement is false?

- a) Flag hosting is a fundamental right of citizens
- b) Only the citizens have the right of freedom of speech and expression
- c) Restrictions can be imposed on freedom of speech and expression in the interest of public order
- d) Pre – Censorship on cinema is unconstitutional.

II. FILL IN THE BLANKS

1. Various international conventions like Universal Declaration of Human Rights, European convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights etc. expressly talk about protection of
2. ‘Right to know’ is also included under the
3. It is....., not the legislature, who has the power to decide finally, whether the restriction imposed on the freedom of speech and expression is reasonable or not.

III. SHORT ANSWER QUESTION

1. In which case Justice Shah stated the “Right to vote is meaningless unless the citizens have no knowledge of the past of their candidate”.
2. Is demonstration of band and hartal are the fundamental rights under Article 19(1)(a).

1.7 REFERENCES

1. Pandey, Dr. Jai Narayan, Constitution of India, 44th edition, Central Law Agency.
2. Constitution of India Diglot Edition, Law Publication, edition 2008.
3. Vasu Acharya Dr. Durga Das, Constitution of India – An Introduction, 9th edition Reprint 2009, Lexis Nexis Butterworth Vadhva Nagpur.
4. Right to Information Act, 2005

1.8 SUGGESTED READING

1. Dr. J.J.R. Upadhyay, Constitution of India
2. Durga Das Vasu, Shorter Constitution of India
3. The Constitution of India, Bare Act
4. Right to Information Act, 2005

1.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. The foundation stone of any democratic ruling system is the freedom of speech and expression. Comment.
2. Write an essay on the Freedom of Press.
3. On what grounds, the freedom of speech and expression can be restricted?
4. 'Right to know' is also included under the Article 19(1)(a). Comment.

1.10 ANSWER SAQS

I. TICK (✓) THE CORRECT ANSWER

1. (c) 2. (a) 3. (b) 4. (d) 5. (b) 6. (d)
7. (c) 8. (b) 9. (d)

II. FILL IN THE BLANKS

1. freedom of speech and expression; See 1.3.1 2. Article 19(1)(a); See 1.3.2.2
3. Court; See 1.3.3.1

III. SHORT ANSWER QUESTION

1. *People's Union for Civil Liberties Vs Union of India*; See 1.3.2.3 2. No; See 1.3.2.11

TERMINAL QUESTIONS AND MODEL QUESTIONS

1. See 1.3.2.6, 1.3.2.7, 1.3.2.8, 1.3.2.9
2. See 1.3.2.6
3. See 1.3.3.3
4. See 1.3.2.2

UNIT-2

OBSERVATION OF THE COURT REGARDING PROACTIVE DISCLOSURE OF INFORMATION

STRUCTURE

2.1 INTRODUCTION

2.2 OBJECTIVES

2.3 SUBJECT

2.3.1 PRO-ACTIVE DISCLOSURE CLAUSE UNDER RTI ACT, 2005

2.3.1.1 MAINTENANCE AND COMPUTERIZATION OF RECORDS

2.3.1.2 *SUO MOTU* DISCLOSURE

2.3.1.3 DISSEMINATION OF INFORMATION IN EASILY ASSESSIBLE FORM

2.3.2 GUIDELINES ON *SUE MOTU* DISCLOSURE UNDER SECTION 4

2.3.2.1 *SUE MOTU* DISCLOSURE OF MORE ITEMS UNDER SECTION 4 OF RTI ACT

2.3.2.1.1 INFORMATION RELATED TO PROCUREMENT

2.3.2.1.2 PUBLIC PRIVATE PARTNERSHIP

2.3.2.1.3 TRANSFER POLICY AND TRANSFER ORDERS

2.3.2.1.4 RTI APPLICATIONS

2.3.2.1.5 CAG AND PAC PARAS

2.3.2.1.6 CITIZEN CHARTER

2.3.2.1.7 DISCRETIONARY AND NON-DISCRETIONARY GRANTS

2.3.2.1.8 FOREIGN TOUR OF PRIME MINISTER/MINISTERS

2.3.2.2 GUIDELINES FOR DIGITAL PUBLICATION OF PROACTIVE DISCLOSURE UNDER SECTION 4 OF RTI ACT

2.3.2.3 COMPLIANCE WITH PROVISIONS OF *SUO MOTU* (PROACTIVE) DISCLOSURE UNDER THE RTI ACT

2.3.2.4 IMPLEMENTATION OF SECTION 4 OF THE RTI ACT, 2005

2.3.3 OBSERVATION OF COURT REGARDING PROACTIVE DISCLOSURE

2.3.5 DISCLOSURE OF INFORMATION - RTI VERSUS OTHER ACTS

2.4 SUMMARY

2.5 GLOSSARY

2.6 SAQS

2.7 REFERENCES

2.8 SUGGESTED READINGS

2.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

2.10 ANSWER SAQS

2.1 INTRODUCTION

Proactive disclosure is the act of releasing information before it is requested. Right to Information Act has a clause seeking that governments and public institutions should *suo motu* or pro-actively share information with the public. The act visions that this pro-active disclosure clause should be implemented fully, such that citizens do not have a need to seek information by filing requests under this act. The use of internet, through the institution's web-sites for disseminating information is seen as a method of fulfilling this requirement.

As per Section 4 of RTI Act, public authorities were under an obligation to make certain *suo motu* disclosures. These Disclosures are mandatory and are crucial to ensure transparency and accountability in institutions.

In the previous unit we read about the 'Right to Know' of the people. Before the RTI Act 2005, was passed, the Supreme Court of India established the fact that 'Right to know' is also included under the Article 19(1)(a).⁶⁸ In *S.P. Gupta and others Vs President of India and others*⁶⁹ The Supreme Court stated that the democratic government is an open government and the public has right to know about it.

⁶⁸ *S.P. Gupta and others vs. President of India and others*, A.I.R. 1992, SC 14; *India Express Newspapers vs. Indian Union*, (1985) SC 641;

⁶⁹ A.I.R. 1992 S.C. 14

2.2 OBJECTIVES

After reading this unit you will be able to understand the following :

- About *suo motu* disclosure provision under Right to Information Act, 2005
- Mandatory provisions made for public authorities under section 4 of RTI Act
- Kind of information that must be disclosed on *suo motu* basis by every public authority and disseminate in such way, that easily associable to the common public
- Guidelines of government on proactive disclosure under section 4 of RTI Act
- Decision of court regarding proactive disclosure before the commencement of RTI Act, 2005
- Various observations of court and Central Information Commission regarding proactive disclosure under section 4 of RTI Act
- The motive of *suo motu* disclosure clause
- Implementation and compliance mechanism for proactive disclosure

2.3 SUBJECT

2.3.1 PRO-ACTIVE DISCLOSURE CLAUSE UNDER RTI ACT, 2005

Public authorities are the repository of information which the citizens have a right to have under the Right to Information Act, 2005. The Act casts important obligations on public authorities so as to facilitate the citizens of the country to access the information held under their control. Section 4 of the Right to Information Act, 2005 put obligations on the public authorities to ensure transparency on its working and made available all information to the public on *suo moto* basis. The provision of *suo moto* disclosure in the RTI Act aiming to place large amount of information in public domain on a proactive basis to make the functioning of the public authorities more transparent and also to reduce the need for filing individual RTI applications.

2.3.1.1 MAINTENANCE AND COMPUTERIZATION OF RECORDS

Proper management of records is of utmost importance for effective implementation of the provisions of the Act. Hence every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.⁷⁰ In an important decision the Chief Information Commissioner held that State has a duty to

⁷⁰ Section 4 of RTI Act,2005

inform citizens about the Law as and when it was made and the citizens also have right to know of the Law.⁷¹ It is the duty of state to provide easy access to up-to-date legal information to its citizen.

2.3.1.2 SUO MOTO DISCLOSURE

There is clear provision made in the act, that it is necessary for every public institution to provide all its information in the public domain. Section 4 (1)(b) of the RTI Act read as follows,

“Every public authority shall publish within one hundred and twenty days from the enactment of this Act,—

- (i) the particulars of its organisation, functions and duties;
- (ii) the powers and duties of its officers and employees;
- (iii) the procedure followed in the decision making process, including channels of supervision and accountability;⁷²
- (iv) the norms set by it for the discharge of its functions;⁷³
- (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- (vi) a statement of the categories of documents that are held by it or under its control;
- (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards; councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- (ix) a directory of its officers and employees;
- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;⁷⁴
- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (xiii) particulars of recipients of concessions, permits or authorisations granted by it;

⁷¹ CIC/SS/C/2013/900008-SA, Decision Dated- 04/11/2015-Vansh Sharad Gupta v. PIO Legislative Department

⁷² Detailed guidelines regarding proactive disclosure were issued by Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training on 13th April 2013; https://dopt.gov.in/sites/default/files/CompendiumIRDivision_Latest.pdf

⁷³ Ibid

⁷⁴ ibid

- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;⁷⁵
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) the names, designations and other particulars of the Public Information Officers;
- (xvii) such other information as may be prescribed;

and thereafter update these publications every year;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* 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.

It is also noteworthy here that publication of the information as referred to above is not optional. It is a statutory requirement which every public authority is bound to meet. Also it is not enough to provide information once. The public authority is obliged to update such information every year. It is advisable that, as far as possible, the information should be updated as and when any development takes place. Particularly, in case of publication on the internet, the information should be kept updated all the time.

2.3.1.3 DISSEMINATION OF INFORMATION IN EASILY ACCESSIBLE FORM

Clause 3 of section 4 of the Right to Information Act, 2005 provides that, 'For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

So it is not enough to publish information by any governmental organization but they are under obligation to spread such information in a way that the information must reach to the more and more citizens. Again the language of information should according to the local areas, as it must be easily understood by the seekers.

'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

⁷⁵ Ibid

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.”⁷⁶

Delhi High Court in *Delhi Development Authority v. Central Information Commission and Another*⁷⁷, it was held: “*It also provides that the information should be easily accessible and to the extent possible should be in electronic format with the Central Public Information Officer or the State Public Information Officer, as the case may be. The word disseminate has also been defined in the explanation to mean - making the information known or communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet, etc. It is, therefore, clear from a plain reading of Section 4 of the RTI Act that the information, which a public authority is obliged to publish under the said section should be made available to the public and specifically through the internet.*”

The dispersion of information may be done through notice boards, newspapers, public announcements, media broadcast, the internet or any other means. The public authority should take into consideration the cost effectiveness, local language and most effective method of communication in the local area while disseminating the information. Even inspection of offices of any public authority, also come under the means of dissemination of information.⁷⁸ Any person who seeks information can inspect the office of any public organization for seeking any information.

2.3.2 GUIDELINES ON SUE MOTU DISCLOSURE UNDER SECTION 4 OF RTI ACT

Some year later, after promulgation of RTI Act, 2005, it was felt by the government that, the proactive disclosure under the section 4 of RTI Act is not up to desire level. The reason behind this is that certain provision of the act have not been fully detailed and in case of certain other provisions there is need for laying down detailed guidelines. Also there is need for setting up compliance mechanism to ensure that requirement of section 4 of RTI Act are met. In order to address these issue Government of India constituted a Task Force on *suo motu* disclosure under the RTI Act, 2005 in May 2011 which included representatives of civil society organizations active in the field of Right to Information, for strengthening compliance with provisions for *suo motu* or proactive disclosure as given in Section 4 of the RTI Act, 2005. Based on the report of the Task Force, the Government have decided to issue guidelines for *suo motu* disclosure under section 4 of the RTI Act.⁷⁹

It is important to mention here that all those information which falls under the ambit of exemption of disclosure of information under section 8 of the RTI Act, 2005 would not be

⁷⁶ Section 4(4) of the RTI Act, 2005

⁷⁷ WP (C) 12714/2009; decision on: 21.05.2010;

⁷⁸ See explanation, section 4 of RTI Act, 2005

⁷⁹ For detail see https://dopt.gov.in/sites/default/files/CompendiumIRDivision_Latest.pdf

disclosed *suo motu*.⁸⁰ These guidelines would not be applicable, where the information effect on the sovereignty, integrity, security, strategic, scientific or economic interest of the state. These instruction would not apply to security and intelligence organisations under the second schedule of the RTI Act.

2.3.2.1 SUE MOTU DISCLOSURE OF MORE ITEMS UNDER SECTION 4 OF RTI ACT

Sub-section 4(2) of the RTI Act, 2005 requires every public authority to take steps in accordance with the requirements of clause (b) of sub-section 4(1) to provide as much information *suo motu* to the public at regular intervals through various means of communication, including internet, so that the public have minimum resort to use the Act to obtain information. Accordingly, the Public Authorities may proactively disclose the following items also under the *suo motu* disclosure provisions of Section 4:⁸¹

2.3.2.1.1 INFORMATION RELATED TO PROCUREMENT

Information relating to procurement made by public authorities including publication of notice/ tender, enquiries, corrigenda thereon and details of bid awards detailing the name of the supplier of goods/services being procured or the work contracts entered or any such combination of these and the rate and total amount at which such procurement or works contract is to be done should be disclosed.⁸² In case of procurements made through DGS&D Rate Contracts or through Kendriya Bhandar/ NCCF, only award details need to be published.

2.3.2.1.2 PUBLIC PRIVATE PARTNERSHIP

If public services are proposed to be provided through a public private partnership (PPP), all information relating to the PPPs must be disclosed in the public domain by the public authority entering into the PPP contract/concession agreement. This may include details of special purpose vehicle (SPV), if any setup, detailed project reports, concession agreement, operation and maintenance manuals and other documents generated as part of the implementation of PPP project. Further information about fees, tolls or other kinds of revenue that may be collected under authorisation from the Government, information in respect of outputs and outcomes, process of selection of private sector party may also be proactively disclosed. All payments

⁸⁰ For detail see unit1- INFORMATION EXEMPTED FROM DISCLOSURE

⁸¹ see https://dopt.gov.in/sites/default/files/CompendiumIRDivision_Latest.pdf

⁸² All information disclosable as per Ministry of Finance, Department of Expenditure's O.M. No 10/1/2011-PPC dated 30th November, 2011 on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 30th March, 2012 on Implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4. At present the limit is fixed at Rs. 10.00 lakhs.
https://dopt.gov.in/sites/default/files/CompendiumIRDivision_Latest.pdf

made under the PPP project may also be disclosed in a periodic manner along with the purpose of making such payment.

2.3.2.1.3 TRANSFER POLICY AND TRANSFER ORDERS

Transfer policy for different grades/cadres of employees serving in public authority should be proactively disclosed. All transfer orders should be publicized through the website or in other manner listed in Section 4(4) of the Act.

2.3.2.1.4 RTI APPLICATIONS

All public authorities shell proactively disclose RTI application and appeals received and their responses on the websites maintained by public authorities with search facility based on keywords. RTI applications and appeals received and their responses relating to the personal information of an individual may not be disclosed as they do not serve any Public Interest.

2.3.2.1.5 CAG AND PAC PARAS

Public authorities may proactively disclose the CAG and PAC paras and the action taken reports (ATRs) only after these have been laid on the table of both the houses of the Parliament.

2.3.2.1.6 CITIZEN CHARTER

Citizen Charter prepared by the Ministry/Department as part of the Result Framework document of the department organisation should be proactively disclosed and six month report on the performance against the Benchmarks set in Citizen Charter should also be displayed on the website of public authorities.

2.3.2.1.7 DISCRETIONARY AND NON-DISCRETIONARY GRANTS

All discretionary /non-discretionary grants /allocation to state governments/NGOs/Other Institutions by Ministry/Department should be placed on the website of the Ministry/Department concerned. Annual accounts of all legal entities who are provided by Public Authorities should be made available through Publication, directly or indirectly on the Public Authority's website.

2.3.2.1.8 FOREIGN TOUR OF PRIME MINISTER/MINISTERS

In compliance with the section 4 of RTI Act, 2005, every public authority should proactively disclose the details of foreign and domestic officials tour undertaken by minister(s) and officers.⁸³ The disclosure may be updated once every quarter. Disclosed information should

⁸³ As per DoPT's OM No. 1/8/2012, Public Authorities may proactively disclosed the detail of foreign and domestic official tours undertaken by the minister(s) and officials of the rank of joint secretary to the Government of India and above the Head of Departments since 1st January 2012; https://dopt.gov.in/sites/default/files/CompendiumIRDivision_Latest.pdf

contains nature of tour, places visited, the period , number of people included in the delegation and total cost of such travel undertaken. Information regarding the nature place and period of foreign and domestic tours of Prime Minister are disclosed on the PMO website.

These instructions would not be applied to security and intelligence organisation under the second schedule of RTI act 2005 and CVO's of public authorities

2.3.2.2 GUIDELINES FOR DIGITAL PUBLICATION OF PROACTIVE DISCLOSURE UNDER SECTION 4 OF RTI ACT

Section 4 lays down the information should be provided to many mediums bending upon the level of the public authorities and the recipient of information for example in case of Panchayat wall painting may be more effective means of dissemination of Information and that more and more proactive disclosure would gradually we made through internet.

The Department of Information Technology has been working on setting of technical standards for government websites and the Department of Administrative Reforms & Public Grievances has published guidelines for websites of Government Departments. The following principles additionally should also be kept in view, while disclosing the information on websites-

- It should be the endeavor of all public authorities that all entitlements to citizens and all transactions between the citizen and government are gradually made available through computer based interface.
- Websites should contain detailed information from the point of origin to the point of delivery of entitlements/services provided by the Public Authorities to citizens.
- Orders of the public authority should be uploaded on the website immediately after they have been issued.
- Website should contain all the relevant Acts, Rules, forms and other documents which are normally accessed by citizens.
- Websites should have detailed directory of key contacts, details of officials of the Public Authority.
- With obligation under Section 4(l)(b)(xiv) of the RTI Act the public authority should therefore indicate in their websites that, which digitally held information is made available publicly over the internet and which is not.
- it is recommended that the requirement of bringing due transparency as provided in the RTI Act is given adequate consideration at the design stage of electronic system delivery.
- To maintain reliability of information and its real time updation, information generation in a digital form should be automatically updated on the basis of key work outputs. This approach will lead to automation of proactive disclosure.

- Information must be presented from a user's perspective, which may require rearranging it, simplifying it etc.
- All different media and forms should be used for proactive disclosure. For example, there have been moves in some parts of the country to video record Gram Sabha meetings or a picture of a NREGA worksite may tell much more than words can.
- Every webpage displaying information or data proactively disclosed under the RTI Act should, on the top right corner, display the mandatory field 'Date last updated (DD/MM/YY)'.

2.3.2.3 COMPLIANCE WITH PROVISIONS OF *SUO MOTU* (PROACTIVE) DISCLOSURE UNDER THE RTI ACT

The Department of Personnel & Training (DoPT) directed that:⁸⁴

- Each Ministry/Public Authority shall ensure that issued guidelines are full operationalized within a period of 6 months from the date of their issue.
- Proactive disclosure as per guidelines would require collating a large quantum of information and digitizing it.
- The Action Taken Report on the compliance of these guidelines should be sent, along with the URL link, to the DoPT and Central Information Commission soon after the expiry of the initial period of 6 months.
- Each Ministry/ Public Authority should get its proactive disclosure package audited by third party every year. The audit should cover compliance with the proactive disclosure guidelines as well as adequacy of the items included in the package. The audit should examine whether there are any other types of information which could be proactively disclosed. Such audit should be communicated to the Central Information Commission annually through publication on their own websites. All Public Authorities should proactively disclose the names of the third party auditors on their website.
- The Central Information Commission should examine the third-party audit reports for each Ministry/Public Authority and offer advice/recommendations to the concerned Ministries/ Public Authorities.
- Central Information Commission should carry out sample audit of few of the Ministries/ Public Authorities each year with regard to adequacy of items included as well as compliance of the Ministry/Public Authority with these guidelines.
- Compliance with the proactive disclosure guidelines, its audit by third party and its communication to the Central Information Commission should be included as RFD target.

APPOINTMENT OF A NODAL OFFICER

⁸⁴ see https://dopt.gov.in/sites/default/files/CompendiumIRDivision_Latest.pdf

It was also directed that, each Central Ministry/ Public Authority should appoint a senior officer not below the rank of a Joint Secretary and not below rank of Additional HOD in case of attached offices for ensuring compliance with the proactive disclosure guidelines. The Nodal Officer would work under the supervision of the Secretary of the Ministry/Department or the HOD of the attached office, as the case may be. Government has also issued directions to all Ministries/Departments to include a chapter on RTI Act in their Annual Reports submitted to the Parliament. Details about compliance with proactive disclosure guidelines should mandatorily be included in the relevant chapter in Annual Report of Ministry/Department.

2.3.2.4 IMPLEMENTATION OF SECTION 4 OF THE RTI ACT, 2005

To strengthen implementation of Section 4 of the RTI Act, 2005, a Committee of experts consisting of Shri A.N.Tiwari, Chief Information Commissioner(Retd) and Dr. M.M.Ansari, Information Commissioner(Retd) (of Central Information Commission) was constituted. The recommendations given by the committee⁸⁵ were duly accepted and it is requested to all public authorities to follow them. Thereafter, DOPT has Issued instructions to all Public Authorities in this regard vide O.M. No. 1/1/2013-IR dated 09 July, 2015 that the Departments must make an analysis of information which is sought most often from applicants and provide it on their website as *suo-motu* disclosure.

Then a committee was set up under the chairmanship of Dr. Devesh Chaturvedi, Joint Secretary, DoPT to examine the recommendations of the Committee of Experts. As per office memorandum (Dated the 30th June 2016) It was further directed that, ‘the Public Authorities shall constitute Consultative Committees consisting of office bearers of key stakeholder, association on rotational basis to have a systematic and regular interaction between the officials of the Public Authorities to advice what information to be uploaded as *suo motu* with date. ‘Information and Facilitation Centres’ (IFCs) may be set up in each public authority, where public dealing is involved to educate the citizens about the information / documents available on the website of the department concerned. The information that are frequently asked by applicants must be disclosed in the public domain to make it more user friendly and should also be reviewed at regular intervals. Information that is proactively disclosed must be properly categorized and organised in such a manner that it facilitates easy retrieval and the Nodal Officer of each Public authority be made responsible for this. The task of undertaking transparency audits may be given to the respective Training Institutes under each Ministry/Department/Public Authority and across the states and union territories.’

2.3.3 OBSERVATION OF COURT REGARDING PROACTIVE DISCLOSURE

⁸⁵ Office memorandum (Dated: 29th June 2015); https://dopt.gov.in/sites/default/files/CompendiumIRDivision_Latest.pdf

Right to know is implicit in right of free speech and expression. Disclosure of information regarding functioning of the government must be the rule.⁸⁶

Before the commencement of Right to Information Act, 2005 the Supreme Court of India established “right to get information” as “a natural right” under Article 19(1)(a) of the constitution in the case of *Association for Democratic Reforms*⁸⁷. In the case of *Arun Kumar Vs Punjab National Bank, Bihar Zone*⁸⁸ the CIC held that, the criteria, norms and guidelines, if any, evolved for promotion in higher grade should not be treated as confidential. These ought to be made transparent and accessible to everyone.

The Hon’ble Supreme Court of India in the matter of *CBSE and Anr. Vs. Aditya Bandopadhyay and Ors*⁸⁹ held as under: “ The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under Clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption.”

INFORMATION UNDER SECTION 4(1)(B)

In the case of *Dr. Ganga Agnihotri, Professor in Electrical Engineering, Vs Maulana Azad National Institute of Technology, Bhopal*⁹⁰, the matter was non-furnishing of information even after 100 days and non-publishing of information u/s 4(1)(b). the appellant asked for copy of a communication from the Ministry of Human Resource Development and copy of the notes on the file on the basis of which the Chairman of the Board of Governors of MANIT had called for her views and a copy of application of Mrs. Archana Soni for Commonwealth Scholarship. The Commission expressed its grave concern at the delay that had already taken place and gave the Respondents 15 working days, from the date of issue of the Order, to supply the full information as requested by the Appellant.

COMPLIANCE OF SECTION 4

In an another case of *Rajnish Singh Chaudhary Vs UPSC*⁹¹, the UPSC declined to provide information on cut-off marks for selection of General and OBC and name of chairman and members of the interview board. CIC held that the process of recruitment of staff for various

⁸⁶ *S.P. Gupta v. Union of India and another* [1981 Suppl. SCC 87 at 273]

⁸⁷ *Union of India v. Association for Democratic Reforms and Anr.* (2002) 5 SCC 294.

⁸⁸ Appeal No.29/IC(A)/06 – Order dated 20-04-2006;

⁸⁹ 2011 (8) SCC 497

⁹⁰ Appeal No. CIC/MA/A/2005/00004 – Order dated 02-05-2006

⁹¹ Decision No.231/IC(A)/2006 - F. No.CIC/MA/A/2006/00622 - Dated, the 1st September, 2006

types and levels of jobs is closely related to right to work. It has therefore significant bearing on life and liberty of citizens. Accordingly, every public authority should adhere to the principle of maximum disclosure and provide a reasonable explanation, u/s 4(1)(d) of the Act, for every action taken by them. In view of this, there is no valid reason for withholding the information. The action relating to determination and application of cut-off point, being an extremely critical factor in life and career of a person, should fall under public domain. In the instant case, the information sought should therefore be furnished, since the matter is complete and over.

Similarly in the case of *Er. Sarbajit Roy Vs CPIO, Delhi Development Authority*⁹² - Numerous grievances concerning the implementation of the Act at DDA where access to information was being denied to him and others, thereby causing him to approach the Commission in the public interest, and had prayed inter-alia on various grounds that the information sought by him, including information. In his decision commission also directed to provide the Commission a compliance report for the Commission's record, with respect to Section 4 of the Act. The Acts and Rules relevant to the functioning of the public authority may be published on the website as expeditiously as possible and in any case within 30 days.

ENSURING PRO-ACTIVE DISCLOSURE OF INFORMATION AS PER SECTION 4(1) OF THE RTI ACT

In his decision The Central Information Commission directed various authorities to ensure pro-active disclosure of information in compliance of section 4 of the Right to Information Act, 2005. The CIC in an case directed the bank, "As a public authority, the Bank is required to make pro-active disclosure of all the relevant information as per provisions u/s 4(1), unless the same is exempt under the provisions of Section 8(1). In fact, an information regime should be created such that citizens would have easy access to information without making any formal request for it." Also while seeking exemptions from disclosure of information u/s 8(1) the reasons of Commercial Confidence, Trade Secret or Competitiveness of the Bank, etc. should be clearly articulated.⁹³

In an another case⁹⁴, the public authorities, including IREDA are directed to: (a) ensure disclosure of information as per Section 4(1) of the Act so that a citizen does not have to

⁹² Complaint No. 10/1/2005-CIC – Order dated 25-02-2006

⁹³ Appeal No. 23/IC(A)/2006 – Order dated 10-04-2006, *Kishur J Aggarwal, Editor in Chief, Nuurrie Media Vs Corporation Bank, Mangladevi Temple Road, P.B. No. 88, Mangalore – 575001*; also see- Appeal No. 26/IC(A)/06 – Order dated 07-04-2006, *Kishur J Aggarwal, Editor in Chief, Nuurrie Media Ltd, 442, The Ashok, Chanakyapuri, New Delhi –110 021 Vs Syndicate Bank, Bangalore* and Appeal No. 24/IC(A)/2006 – Order dated 10-04-2006 – *Kishur J. Aggarwal, Editor-in-Chief, Nuurri Media Ltd Vs UCO Bank, Head Office, 10, Biplabi Sarani, Brabourne Road, Kolkata-700 001*

⁹⁴ Appeal No.27/IC(A)/06 – Order dated 10-04-2006 - *Kishur J Aggarwal, Editor in Chief, Nuurrie Media Ltd Vs Indian Renewable nergy Development Agency*

necessarily resort to seek information under the Act, and (b) indicate clearly the grounds of seeking exemption from disclosure of information. Exemptions from disclosure of information relating to donations, for instance, under Section 8(1)(d) has been vaguely mentioned, which is not acceptable. Record management system ought to be improved such that information which are to be disclosed to public could be easily provided, after delineating the information that are confidential or in the nature of trade secret. On the pretext of confidentiality of information, a company should not deprive the citizens of their right to access information that could be utilized for societal benefits.

VOTER'S/CITIZEN'S RIGHT TO KNOW

The Court in *Association for Democratic Reforms case*⁹⁵ said, that, 'the voters' right to know the antecedents of the candidates is based on interpretation of Article 19(1)(a) which provides that all citizens of this country would have fundamental right to "freedom of speech and expression" and this phrase is construed to include fundamental right to know relevant antecedents of the candidate contesting the elections.' The court further said that, "the foundation of a healthy democracy is to have well-informed citizens-voters. The reason to have right of information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth.... A little man-a citizen-a voter is the master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as M.P. or M.L.A... He himself may be illiterate but still he would have guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a mobocracy and mockery or a farce, information to voters is the necessity"

In aforesaid case the validity of section 33B of the Representation of People Act, 1951 was under challenged. In his decision the court further said,

"True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private

⁹⁵ *Union of India v. Association for Democratic Reforms* [(2002) 5 SCC 294].

individuals or oligarchic organisations.... The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world.”

PROACTIVE DISCLOSURE OF LAW AND AMENDMENT

Citizens have right to know of the Law, when it was made. Chief Information Commission has held that State has a duty to inform citizens about the Law. The commission said that, It is impossible for any Government to expect obedience to their Law without informing the people in legible form.⁹⁶

The Delhi High Court, in an important judgement upheld an order of the Central Information Commission (CIC) directing the Legislative Department, Government of India to upload on the official website all laws enacted by Parliament as amended from time to time. It has also upheld the CIC's direction to the Government to examine that the functionality of the official email addresses of officers of the Department.⁹⁷

Vansh Sharad Gupta (complainant), the Law student wanted to study Indian Christian Marriage Act, 1972 from the website, but he couldn't. The Bare Act, he found, was impossible to read as that PDF of Bare Act was not at all formatted. He submitted an RTI application to the Central Public Information Officer (CPIO) of the Legislative Department. The email bounced back. He does not appear to have received adequate redress from the First Appellate Authority. So he approached the CIC.

He contended that as a student of law, for his course work he required to refer to several Bare Acts to ascertain the correct position of law, but website is not in position to help the students of law in any way. He appealed to provide such Bare Acts in a readable PDF format.

While disposing the decision the chief information commissioner pointed that, “It is the minimum responsibility of state to provide updated information about amendments, which will go in long way in helping people. The access to law is not just a requirement of Law student and law researchers, but a necessity of all citizens. For instance, the Parliament by the Criminal Law (Amendment) Act, 2013, has amended section 100 of Indian Penal Code, which provide a right of private defence of body even to the extent of causing death in case of acid attack. Many men or women are not even aware of self-defence right that they can even kill assailant if the later is attacking to kill, rape or throw acid, or cause grievous hurt etc.”

⁹⁶ CIC/SS/C/2013/900008-SA, Decision Dated- 04/11/2015-*Vansh Sharad Gupta vs PIO legislative Department*

⁹⁷ Uphold Proactive Disclosure of Laws & Amendments: Delhi HC; Commonwealth Human Rights Initiative;

<http://www.humanrightsinitiative.org/blog/uphold-proactive-disclosure-of-laws-amendments-delhi-hc>

The CIC directed the Legislative Department to inform the complainant and the Commission as to what action has been taken including details of the programme of updation, the possible date of its completion, expenditure involved, personnel employed etc. The Commission also recommends the department to recognise urgency and significance of the issue, expedite the process, allocate more fund to employ more personnel and complete the process of updation as soon as possible. The Commission also directs the respondent authority to examine the functionality of the email ID in view of the Complainant's claim that most of the email ID have failed. The Legislative Department also should have perfect RTI filing system and answer mechanism."

Despite the fact that the RTI intervention begun in July 2012 was resolved by the CIC only in November 2015 (more than 3 years later), the CIC directed the Legislative Dept. to pay Rs. 10,000/- as compensation to the NLSIU as an exemplary measure. The Legislative Dept. challenged the CIC's order before the Delhi High Court. But the Delhi High Court uphold the decision of CIC. The court also pointed out that, 'this Court is not an appellate Court of the CIC. Technical and procedural arguments cannot be allowed to come in the way of substantial justice. The directions given by the CIC in the impugned order are not only fair and reasonable but also promote the concept of rule of law. It is unfortunate that the petitioner (legislative department) did not take the initiative on its own to upload the latest amended bare Acts.'

The High Court upheld the CIC's order for token compensation saying: "*This Court also take judicial notice of the fact that in challenging the imposition of costs of Rs.10,000/-, the Government of India would have spent more money in filing the present writ petition. Consequently, this Court is of the view that the costs of Rs.10,000/- which was directed to be paid by the CIC, should be recovered from the salary of the Government officials who authorized the filing of the present writ petition.*"⁹⁸

SECTION 4(2) OF THE RTI ACT MANDATES EVERY PUBLIC AUTHORITY TO PROVIDE AS MUCH INFORMATION SUO-MOTU BASIS

In a latest case (decision delivered on 15. 01. 2019) of *Mr. Kantilal B. Chavda vs CPIO Central University of Gujarat Sector – 29, Gandhinagar Gujarat – 382030*⁹⁹ Shri Bimal Julka, the Central Information Commissioner having heard the Respondent at length and on perusal of the queries raised in each of the RTI application, the Commission felt that several queries inter alia regarding disclosure of vendor wise total purchase value of chemicals, Chairperson and the Members of the Library Committee, the total amount of books purchased by the University Library, minutes for the appointment of Registrar, minutes of Executive Council Meetings, years for which the University conducted online entrance test, criteria for merit list for

⁹⁸ ibid

⁹⁹ CIC/CUGUJ/A/2017/167463-BJ, Decision on 15.01.2019; <https://dsscic.nic.in/cause-list-report-web/download>

admission of M.Phil., Ph.D. programmes followed by the university etc. should be *suo motu* disclosed on the website of the Public Authority for the interest of the public at large. The Commission, therefore, observed that a voluntary disclosure of all information that ought to be displayed in the public domain should be the rule and members of public who having to seek information should be an exception. An open government, which is the cherished objective of the RTI Act, can be realised only if all public offices comply with proactive disclosure norms. Section 4(2) of the RTI Act mandates every public authority to provide as much information *suo motu* to the public at regular intervals through various means of communications, including the Internet, so that the public need not resort to the use of RTI Act.

The Commission noted that the fundamental principles enshrined in the preamble to the RTI Act requiring the Public Authority to facilitate and build an informed citizenry and bring about transparency of information which was vital to its functioning as also to contain corruption and in still a sense of responsibility and accountability in its functioning was not addressed adequately in the aforesaid matters. Keeping in view the facts of the case and the submissions made by the Respondent, the Commission advises the Vice Chancellor / Registrar of the Respondent Public Authority to *suo motu* disclose the information as narrated in the preceding paragraphs in the public domain in accordance with the provisions of Section 4 of the RTI Act, 2005 for ease and convenience of the stakeholders at large so that the public need not resort to the RTI mechanism for seeking such information as outlined in the aforesaid Court judgements.¹⁰⁰

In the light of above latest decision we can say that besides detailed guidelines issued by Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training (Dated the 15th April, 2013) regarding the implementation of *suo motu* disclosure under provisions of Section 4, is not fully recovered.

A Audit Report is submitted to Central Information Commission New Delhi at November 2018 by A N Tiwari & M M Ansari under the heading of '**Transparency Audit of Disclosures u/s 4 of the Right to Information Act by the Public Authorities**'. This is related to the audit of online disclosures by Public Authorities through their websites.¹⁰¹

The report indicate that '***due largely to the RTI Act, state institutions are now under positive pressure to make their functions progressively more transparent***'. In this report, an assessment of disclosure by Public Authorities reveals that certain vital information is not fully displayed on the official websites of the different government departments.

¹⁰⁰ Ibid

¹⁰¹ It is already discuss earlier in present unit that, the Department of Personnel and Training (DoPT) directed all the PAs, vide its order dated April 15, 2013, to ensure regular audit of mandatory disclosures by a third party.

In the concluding remarks of above report, it is said, “*We have been at pains to point out in our report that while the audit of the websites of the Public Authorities is a necessary step in the direction of ushering in greater transparency in the functioning of the state instrumentalities, the ultimate objective still remains the embrace of transparency by them as central to governance. This task can be performed only by the government who control all supply side of information. It is our hope that the initiative taken by the Central Information Commission to evaluate disclosure standards on websites of public authorities shall usher in the change which the RTI Act enjoins. We repeat that institutional transparency is the final frontier of the Right to information movement.*”¹⁰²

2.3.5 DISCLOSURE OF INFORMATION - RTI VERSUS OTHER ACTS

In an important case of *Rakesh Kumar Vs. ITAT*¹⁰³- CIC full bench decided that, RTI Act does not repeal or substitute any pre-existing law including the provisions of Income Tax Act concerning dissemination of information. But, it does not mean, that since there is a pre-existing law, the provisions of the RTI Act shall be either inapplicable or be rendered redundant. It is true that Section 138 of the Income Tax Act provides for disclosure of certain information but so does the RTI Act. In this case, the appellant has exercised her option and has submitted application under the RTI Act of 2005 and not under the Income Tax Act. Now, Act, 2005 and thus, he has a choice, which once exercised should be recognized and respected. As has been pointed out earlier, there is no inconsistency between the Income Tax Act and the RTI Act. In the Income Tax Act, information can be disclosed in public interest whereas under the RTI Act, every information held by the Public Authority is disclosable unless it is “exempted” as specified under Sections 8 or 9 of the Act.

2.4 SUMMARY

The Preamble of the RTI Act 2005 says ‘Democracy requires an informed citizenry and transparency of information, which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.’

The provision of *suo moto* disclosure on proactive basis under section 4 of the RTI Act aiming to place large amount of information in public domain on a proactive basis to make the

¹⁰² See full report at:

<https://cic.gov.in/sites/default/files/Transparency%20Audit%20of%20Disclosures%20Under%20Section%204%20of%20the%20RTI%20Act%20by%20the%20Public%20authorities.pdf>

¹⁰³ CIC Full Bench decision – F. No CIC/AT/2006/00586 – Decision dated 18-09-2007;

functioning of the public authorities more transparent and also to reduce the need for filing individual RTI applications.

Section 4 (1)(b) make mandatory for every public authority to publish within one hundred and twenty days from the enactment of the Act about the particulars of its organisation, functions and duties, powers and duties of its officers and employees, procedure followed in the decision making process, budget allocated to each of its agency, details in respect of the information, available to or held by it, the names, designations and other particulars of the Public Information Officers and such other information as may be prescribed. Section 4(2) make it clear that, it is the duty of every public authority to provide as much information *suo motu* 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. Again clause 3 of said section says that it is not enough to providing information but also disseminated every information widely and in such form and manner which is easily accessible to the public such as, through notice boards, newspapers, public announcements, media broadcast, the internet etc. and the information should be kept updated all the time.

In May 2011, the Government of India constituted a Task Force on *suo motu* disclosure, included representatives of civil society organizations active in the field of Right to Information. Based on the report of the Task Force, the Government have decided to issue detailed guidelines for *suo motu* disclosure under section 4 of the RTI Act. The Department of Personnel & Training (DoPT) came up with an office memorandum (15 April, 2013) with guidelines on: (i) *Suo motu* disclosure of more items under Section 4; (ii) Guidelines for digital publication of proactive disclosure under Section 4 and (iii) Detailing of Section 4(1)(b)(iii), 4(1)(b)(iv), 4(1)(b)(xi) and 4(1)(b)(xiv). It also emphasizing the need to set up a “*compliance mechanism to ensure that requirements under section 4 of the RTI Act are met*”. It was directed that “*each Central Ministry/ Public Authority should appoint a senior officer not below the rank of a Joint Secretary and not below rank of Additional HOD in case of attached offices for ensuring compliance with the proactive disclosure guidelines*”. Another significant direction in the DoPT memorandum was that each public authority should get its proactive disclosure package audited annually by a third party like consultants etc. To strengthen implementation of Section 4 of the RTI Act, 2005, a Committee of experts consisting of Shri A.N.Tiwari, Chief Information Commissioner(Retd) and Dr. M.M.Ansari, Information Commissioner(Retd) of Central Information Commission, was constituted. In compliance with the recommendation, further, DOPT has Issued instructions to all Public Authorities in this regard vide O.M. No. 1/1/2013-IR dated 09 July, 2015.

A latest report related to the audit of online disclosures by Public Authorities through their websites was submitted to the CIC at November 2018. In this report, an assessment of disclosure by Public Authorities reveals that certain vital information is not fully displayed on the official websites of the different government departments. Yet state institutions are now

under positive pressure to make their functions progressively more transparent.

In their many decision court made comments regarding proactive disclosure of information and issues guidelines and order in compliance of section 4 of the RTI Act.

Before the RTI Act 2005, was passed, the Supreme Court of India established “right to get information” as “a natural right” under the Article 19(1)(a) of the constitution.¹⁰⁴

The Hon’ble Supreme Court of India in the matter of *CBSE and Anr. Vs. Aditya Bandopadhyay and Ors* 2011 (8) SCC 497 held as under: “*The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under Clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption.*”

The Delhi High Court, in a recent judgment has upheld an order of the Central Information Commission (CIC) directing the Legislative Department, Government of India to upload on the official website all laws enacted by Parliament as amended from time to time. It has also upheld the CIC's direction to the Government to examine that the functionality of the official email addresses of officers of the Department.¹⁰⁵

In his latest judgement dated 15/01/2019, Shri Bimal Julka, the CIC held that, “*Keeping in view the facts of the case and the submissions made by the Respondent, the Commission advises the Vice Chancellor / Registrar of the Respondent Public Authority to suo motu disclose the information as narrated in the preceding paragraphs in the public domain in accordance with the provisions of Section 4 of the RTI Act, 2005 for ease and convenience of the stakeholders at large so that the public need not resort to the RTI mechanism for seeking such information as outlined in the aforesaid Court judgements.*”¹⁰⁶

After discussing all the facet of provision of section 4 of the RTI Act, regarding proactive disclosure of information, the aim of this provision is, besides of too many progress, yet to be achieved.

2.5 GLOSSARY

¹⁰⁴ *S.P. Gupta and others vs. President of India and others*, A.I.R. 1992, SC 14; *India Express Newspapers vs. Indian Union*, (1985) SC 641; *Union of India v. Association for Democratic Reforms and Anr.* (2002) 5 SCC 294.

¹⁰⁵ CIC/SS/C/2013/900008-SA, Decision Dated- 04/11/2015-*Vansh Sharad Gupta vs PIO legislative Department*

¹⁰⁶ *Mr. Kantilal B. Chavda vs CPIO Central University of Gujarat Sector – 29, Gandhinagar Gujarat – 382030*

DoPT : The Ministry of Personnel, Public Grievances and Pensions is a ministry of the Government of India in personnel matters specially issues concerning recruitment, training, career development, staff welfare as well as the post-retirement dispensation.

CAG and PAC : comptroller and auditor general, is a senior civil servant charged with improving government accountability by auditing and reporting on the government's operations. The CAG (Comptroller and Auditor General of India) is a constitutional body created under Article 148 of the Constitution while the Public Accounts Committee (PAC) is a standing committee of Parliament created under Government of India Act, 1919 coming into existence in 1921.

NGOs : Non-Governmental Organizations

PMO : The Prime Minister's Office (PMO) consists of the immediate staff of the Prime Minister of India, as well as multiple levels of support staff reporting to the Prime Minister. The PMO is headed by the Principal Secretary, currently Nripendra Misra. The PMO was originally called the Prime Minister's Secretariat until 1977, when it was renamed during the Morarji Desai ministry.

CVO : Central Vigilance Commission (CVC) is an apex Indian governmental body created in 1964 to address governmental corruption. In 2003, the Parliament enacted a law conferring statutory status on the CVC.

CIC : The Central Information Commission (CIC) set up under the Right to Information Act is the authorised body, established in 2005,[3] under the Government of India to act upon complaints from those individuals who have not been able to submit information requests to a Central Public Information Officer or State Public Information Officer due to either the officer not have been appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refused to receive the application for information under the RTI Act.

RFD target : Results Framework Document. A RFD provides a summary of the most important results that a organization expects to achieve during the financial year.

SUO MOTU : it is a Latin legal term, meaning “on its own motion”

2.6 SAQS

I. SHORT ANSWER QUESTION

1. Which section of the Right to Information Act, 2005 put obligations on the public authorities to ensure transparency on its working and made available all information to the public on *suo moto* basis?

2. Are the exemption of disclosure of information under section 8 of the RTI Act, 2005, apply on the information disclosed on proactive basis?
3. Is Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training, issue any guidelines for central government ministers/ departments, regarding Compliance mechanism for *suo motu* disclosure (proactive disclosure) under the RTI Act, 2005?
4. During which case the CIC held that, 'It is impossible for any Government to expect obedience to their Law without informing the people in legible form.'

II. FILL IN THE BLANKS

1. It is necessary for every public institution to provide all its information in the public domain withinfrom the enactment of RTI Act,2005.
2. The Supreme Court of India established "right to get information" as "a natural right" under Article 19(1)(a) of the constitution in the case of
3. Section 4(1)(b) of the RTI Act relates to securingin the working of public authorities and in discouraging corruption.

III. TRUE AND FALSE STATEMENT

1. It is not sufficient to publish the information once the information should be kept updated all the time. (true/false)
2. All information relating to the Public Private Partnerships must be disclosed in the public domain by the public authority entering into the PPP contract/concession agreement. (true/false)
3. It is necessary to disclosed RTI applications and appeals received and their responses relating to the personal information of an individual, which do not serve any Public Interest. (true/false)

2.7 REFERENCES

1. [http://www.iitbbs.ac.in/pdf/RTI-Act%20\(DoPT%20Guidelines\).pdf](http://www.iitbbs.ac.in/pdf/RTI-Act%20(DoPT%20Guidelines).pdf)
2. <https://www.livelaw.in/best-of-2015-eight-significant-rti-verdicts-from-supreme-court-high-courts-and-cic/>
3. <https://sail.co.in/sites/default/files/sail-pages/cicyearlydigest2008.pdf>
4. <https://dsscic.nic.in/cause-list-report-web/download>
5. <https://cic.gov.in/decision#>

6. Right to Information Act, 2005

7. https://dopt.gov.in/sites/default/files/CompendiumIRDivision_Latest.pdf

8. <http://www.humanrightsinitiative.org/blog/uphold-proactive-disclosure-of-laws-amendments-delhi-hc>

9. <https://cic.gov.in/sites/default/files/Transparency%20Audit%20of%20Disclosures%20Under%20Section%204%20of%20the%20RTI%20Act%20by%20the%20Public%20authorities.pdf>

2.8 SUGGESTED READINGS

1. <https://cic.gov.in/decision#>

2. Right to Information Act, 2005

3. https://dopt.gov.in/sites/default/files/CompendiumIRDivision_Latest.pdf

4. <http://www.humanrightsinitiative.org/blog/uphold-proactive-disclosure-of-laws-amendments-delhi-hc>

5. <https://cic.gov.in/sites/default/files/Transparency%20Audit%20of%20Disclosures%20Under%20Section%204%20of%20the%20RTI%20Act%20by%20the%20Public%20authorities.pdf>

6. Right to Information Law in India by N. V. Paranjape

2.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Describe the *suo motu* provisions of section 4 of the RTI Act in brief.
2. Write short note on ‘dissemination of information in easily accessible form’.
3. Explain the guidelines issued by the government of India for *suo motu* disclosure under section 4 of the RTI Act.
4. Write the guidelines regarding *suo motu* disclosure of foreign tours of prime minister and other ministers.
5. What are the guidelines for digital publication of proactive disclosure under section 4 of RTI Act?
6. Explain the compliance and implementation of section 4 of the RTI Act, 2005, in brief.
7. Write an essay on observation of court regarding proactive disclosure under RTI Act.
8. “The citizens’ right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State.” Comment.

2.10 ANSWER SAQS

I. SHORT ANSWER QUESTION

1. Section 4; see 2.3.1 2. Yes; See 2.3.2 3. Yes; See 2.3.2.3 4.
CIC/SS/C/2013/900008-SA, Decision Dated- 04/11/2015-*Vansh Sharad Gupta vs PIO legislative Department*; See 2.3.3

II. FILL IN THE BLANKS

1. one hundred and twenty days; See 2.3.1.2 2. *Union of India vs. Association for Democratic Reforms and Anr.* (2002) 5 SCC 294; See 2.3.3 3. transparency and accountability; See 2.3.3

IV. TRUE AND FALSE STATEMENT

1. True; See 2.3.2.1 2. True; See 2.3.2.1.2 3. False; See 2.3.2.1.4

TERMINAL AND MODEL QUESTION

1. See 2.3.1
2. See 2.3.1.3
3. See 2.3.2
4. See 2.3.2.1.8
5. See 2.3.2.2
6. See 2.3.2.3 and 2.3.2.4
7. See 2.3.3
8. See 2.3.3

UNIT-3

IMPORTANT JUDICIAL GUIDELINES ON GOOD GOVERNANCE, TRANSPARENCY AND DISCLOSURE

STRUCTURE

3.1 INTRODUCTION

3.2 OBJECTIVES

3.3 SUBJECT

3.3.1 GOOD GOVERNANCE

3.3.1.1 PARTICIPATION OF CITIZENS

3.3.1.2 RULE OF LAW

3.3.1.3 TRANSPARENCY

3.3.1.4 ACCOUNTABILITY

3.3.1.5 RESPONSIVENESS

3.3.1.6 CONSENSUS ORIENTATION

3.3.1.7 EQUITY AND INCLUSIVENESS

3.3.1.8 EFFECTIVENESS AND EFFICIENCY

3.3.1.9 STRATEGIC VISION

3.3.2 TRANSPARENCY AND DISCLOSURE

3.3.3 JUDICIAL GUIDELINES ON VARIOUS SOCIAL, ECONOMICAL, CULTURAL AND POLITICAL ISSUES

3.3.3.1 INTERPRETATION OF LAW

3.3.3.2 VISHAKA'S GUIDELINES

3.3.3.3 GUIDELINES ON POLICE REFORMS

3.3.3.4 DIRECTIONS TO THE INVESTIGATING AGENCIES

3.3.3.5 EDUCATIONAL REFORMS

3.3.3.6 DIRECTION TO THE ELECTION COMMISSION

3.3.3.7 THE PRISONERS, LIKE ALL HUMAN BEINGS, DESERVE TO BE TREATED WITH DIGNITY

3.3.3.8 PROTECTION OF ENVIRONMENT

3.3.3.9 ISSUE OF UNIFORM CIVIL CODE

3.3.3.10 TRANSPARENCY WITHIN THE JUDICIARY

3.4 SUMMARY

3.5 GLOSSARY

3.6 SAQS

3.7 REFERENCES

3.8 SUGGESTED READINGS

3.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

3.10 ANSWER SAQS

3.1 INTRODUCTION

In any state or country the government is a body which is on the top and has power to take decision for the inhabitants of that country or citizens. In a democratic process like India the people choose their representative for governmental body which take decision for the welfare of people and implement them through other bodies called administration. Collectively these bodies and whole process called 'governance'. Rule of law and accountability are closely associated with the 'good governance'. Transparency and disclosure are the primary characteristics of good governance. In fact transparency and disclosure are the two sides of one coin. They do not survive without each other. Forth part of the Indian Constitution provides whole map for welfare state to the government. Time to time in their decision judiciary also interpretate these articles of the constitution and gives guideline to the government for good governance, transparency and disclosure. The Right to Information act plays a crucial role in providing transparency in governance and disclosure of decision making process and also their implementation by administration.

In the previous unit we read about the proactive disclosure by the governmental institutions on many topics and view of judiciary on the proactive disclosure clause in the RTI Act. In the present unit we discuss about the guidelines/directions/suggestions and decisions that are provided by the judiciary on the topic of good governance, transparency in the working of governmental institutions and disclosure of facts that are directly linked to the life of peoples.

3.2 OBJECTIVES

After reading this unit you are able to understand the following:

- Meaning and concept of good governance
- What are the characteristics of good governance
- How transparency and disclosure are integrated with good governance
- Part III and IV of the Indian Constitution provided the full map for good governance, transparency and disclosure
- Indian judiciary as a custodian of the constitution
- In the field where lack of any law or act, the judiciary play their role effectively, directing/ issuing directions/guidelines

- Governance and judiciary are the two main pillar of democracy; A balance should be maintain between two
- How judiciary play pro-active role issuing/directing the matter, influencing every sphere of the life of people and government

3.3SUBJECT

3.3.1 GOOD GOVERNANCE

Good governance is defined by the World Bank as “the manner in which power is exercised in the management of a country’s economic and social resources for development”.¹⁰⁷ The word ‘governance’ is used for the process by which the decision are taken and then implemented. The good or bad is depends on the quality of governance and there are many factors which decided it. The concept of welfare state give rise the birth to the good governance. In a welfare state the decision are taken for the upliftment of social, political and economic life of the people.

The Constitution of India secure to all its citizens social, political and economic justice, liberty of thought and faith and equality of status and opportunity. It also assured ‘dignity of individual’. India adopt the socialist ideology.¹⁰⁸ Indian Constitution guaranteed a number of basic human right as fundamental rights to its citizens. Even some fundamental rights given to foreigners also.¹⁰⁹ Part IV of the constitution laid down certain principals that, the state must apply in making laws.¹¹⁰ In other words these principals would be the fundamentals for ‘good governance’ in India.

Judiciary plays a very crucial role in India. It has been made the guardian of the constitution. If there is any ambiguity in any article the Supreme Court not only makes the interpretation of that article but it has also power to declare any law unconstitutional. Hence the maker of the constitution gives duty to the judiciary as ‘custodian of the Indian Constitution’. Following observations (of Bhagwati, J.) made in *State of Rajasthan v. Union of India* [(1977) 3 SCC 592] were referred to and relied upon by this Court in *B.R. Kapur v. State of Tamil Nadu* [(2002) 7 SCC 231]:

“...Every constitutional question concerns the allocation and exercise of governmental power and no constitutional question can, therefore, fail to be political ***So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the court. Indeed it would be its constitutional obligation to do so.*** It is necessary to assert in the clearest possible terms, particularly in the

¹⁰⁷https://open.unido.org/api/documents/6013703/download/Good%20Governance%20Guidelines_English%20A5_31.3.pdf

¹⁰⁸ Preamble of the Constitution of India

¹⁰⁹ Part III of the Constitution of India

¹¹⁰ Article 37, Constitution of India

context of recent history, that the Constitution is *suprema lex*, the paramount law of the land, and there is no department or branch of government above or beyond it.”¹¹¹

Rightly independent judiciary is crucial for any government to make it accountable. Hence in a good governance judiciary play an important role. Following are the important features of good governance-

3.3.1.1 PARTICIPATION OF CITIZENS

All citizen's should have their participation in the decision making process directly or indirectly. In India the people participate in this process through their representatives, whom they elect by casting their vote in election after every regular interval. “*Democracy is government by the people. It is a continual participative operation.....True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues..*”¹¹²

In *Dinesh Trivedi, M.P. and Others v. Union of India and Others* [(1997) 4 SCC 306], the court held, “in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare”. The Court also observed “democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant”.

3.3.1.2 RULE OF LAW

Rule of law is the primary necessity of achieving good governance. Law must be equal for every citizen irrespective their religion, caste, wealth and status. Rule of law means legal frameworks should be fair and enforced impartially. Fundamental/human rights given by the constitution under part III are the soul of the constitution. They strictly oppose any discrimination between people on any basis. Article 14 of our Constitution guaranteed equality before law in the following words, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

In *Vineet Narain's* case¹¹³ (discussed later in this unit) where the Court has issued necessary guidelines to the CBI and the Central Vigilance Commission (CVC) as there was no legislation covering the said field to ensure proper implementation of rule of law.

In India the constitution is supreme law of land. Any other law against the basic structure of the constitution is illegal and void. The power to interpretation of any law, whether it

¹¹¹ https://www.right2info.org/resources/publications/case-pdfs/india_union-for-civil-liberties-pucl-and-another-v.-union-of-india-and-another

¹¹² *Union of India v. Association for Democratic Reforms and Anr.* (2002) 5 SCC 294.

¹¹³ *Vineet Narain and Others Vs. Union of India and Another* (1998, SCC 226).

compliance with the constitution or not, is in the hand of apex court of India. Hence said custodian of the constitution of India.

In *P. Sambamurthy v. State of A.P.*¹¹⁴ the apex court observed— “ it is basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law.”

3.3.1.3 TRANSPARENCY

Transparency is directly linked with corruption. Less transparency more corruption and more transparency brings less corruption. Transparency is the basis of good governance and the first step in fighting corruption. Corruption undermines basic social values, threatens the rule of law, and undermines trust in political institutions. It creates a business environment in which only the corrupt thrive.

3.3.1.4 ACCOUNTABILITY

Every governmental institutions should be accountable to the people, for their work. Accountability is important in evaluating the on-going effectiveness of public officials or bodies ensures that they are performing to their full potential, providing value for money, instilling confidence in the government and being responsive to the community.

In *Association for Democratic Reforms case*, the court stated as, “The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government....”¹¹⁵

The Hon’ble Supreme Court of India in the matter of *CBSE and Anr. Vs. Aditya Bandopadhyay and Ors* 2011 (8) SCC 497 held as, “ The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under Clause (b) of Section 4(1)¹¹⁶ of the Act which relates to securing

¹¹⁴ [(1987) 1 SCC 363]; In this case the proviso of clause (5) of article 371-D was declared unconstitutional and void.

¹¹⁵ *Union of India v. Association for Democratic Reforms* [(2002) 5 SCC 294]

¹¹⁶ For detail, see previous unit- Observation of the Court regarding proactive disclosure of Information

transparency and accountability in the working of public authorities and in discouraging corruption.”

Furthermore, Delhi High Court in the decision of *General Manager Finance Air India Ltd & Anr v. Virender Singh*, LPA No. 205/2012, Decided On: 16.07.2012 had held as, “The RTI Act, as per its preamble was enacted to enable the citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance. The spirit of the legislation is further evident from various provisions thereof which require public authorities to:

A. Publish inter alia:

- i) the procedure followed in the decision making process;
- ii) the norms for the discharge of its functions;
- iii) rules, regulations, instructions manuals and records used by its employees in discharging of its functions;
- iv) the manner and execution of subsidy programmes including the amounts allocated and the details of beneficiaries of such programmes;
- v) the particulars of recipients of concessions, permits or authorizations granted. [see Section 4(1) (b), (iii), (iv), (v); (xii) & (xiii)].¹¹⁷

B. Suo moto provide to the public at regular intervals as much information as possible [see Section 4(2)].”¹¹⁸

3.3.1.5 RESPONSIVENESS

Any government has a vast organizational structure. A good governance is responsive to the not only present but also to the future needs of its organization. Responsiveness is a kind of behaviour. A government/public authority is responsive if it makes some effort to identify and then meet the needs or wants of the people who will benefit from pro-poor growth. So, state agencies and public authorities must establish means to identify the needs and/or wants of impact groups and mechanisms to deliver public goods that are able to meet these needs and/or wants.¹¹⁹ A responsive governance manage the fund and resources in the welfare of their people.

¹¹⁷ Ibid

¹¹⁸ Ibid

¹¹⁹“Capability, Accountability, Responsiveness. What Do These Terms Mean, Individually and Collectively? A Discussion Note for DFID Governance and Conflict Advisers” By Mick Moore (IDS) and Graham Teskey (DFID) (29 October 2006); <http://www2.ids.ac.uk/gdr/cfs/pdfs/CARframeworkDRCweb.pdf>

In *P.V. Narasimha Rao v. State (CBI/SPE)* [(1998) 4 SCC 626], the Court stated the meaning of public servant as:

“A public servant is “any person who holds an office by virtue of which he is authorised or required to perform any public duty. Not only, therefore, must the person hold an office but he must be authorised or required by virtue of that office to perform a public duty. Public duty is defined by ... Act to mean ‘a duty in the discharge of which the State, the public or that community at large has an interest’. In a democratic form of government it is the Member of Parliament or a State Legislature who represents the people of his constituency in the highest law making bodies at the Centre and the State respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the State shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest.....”

3.3.1.6 CONSENSUS ORIENTATION

A consensus oriented process is one in which people work together to reach as much agreement as possible. It is a group making process in which group members develop, and agree to support a decision in the best interest of the whole. Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group and where possible, on policies and procedures. All men and women have opportunities to improve or maintain their well-being.

3.3.1.7 EQUITY AND INCLUSIVENESS

The welfare of a society depends on ensuring that all its members feel that they have a stake in it and do not feel that they have been excluded from the mainstream of the society. This requires all groups, but particularly the most vulnerable, have opportunity to improve or maintain their wellbeing.

Equity as a concept is fundamental to sustainable development. The Brundtland Commission's¹²⁰ definition of sustainable development is based on intergenerational equity: 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. Development at the cost of nature is harmful for future generations. Article 48A of the Indian Constitution under the chapter of “Directive Principles of State Policy”, says for the protection of nature- “The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

¹²⁰ Formerly known as the World Commission on Environment and Development (WCED), the mission of the Brundtland Commission is to unite countries to pursue sustainable development together.

3.3.1.8 EFFECTIVENESS AND EFFICIENCY

Effectiveness is a measure of 'goodness' of output, while efficiency is a measure of the resources required to achieve the output. It is the efficiency of a government to make such policies in every field, that must so effective in giving 100% success in results. In other words processes and institutions produce results that make the best use of resources.

2.3.1.9 STRATEGIC VISION

Strategic planning links the present to the future. Practical planning process used to help community groups define a vision and develop practical ways to enact change. A vision is a practical guide for creating plans, setting goals and objectives, making decisions, and coordinating and evaluating the work on any project, large or small. A vision helps keep organizations and groups focused and together, especially with complex projects and in stressful times. Through strategic vision the government framing policies to cater future needs and achieve goals successfully.

3.3.2 TRANSPARANCY AND DISCLOSURE

UNDP Strategy Note on Governance for Human development described that governance is "a system of values, policies and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector. Transparency is without any doubt accepted as a major principle of good governance. The UNDP has perceived that transparency means "sharing information and acting in an open manner" (1997). Transparency represents that decisions taken and their enforcement are done in a way that follows rules and regulations.

Apparently transparency and disclosure are same because both are telling facts. But **transparency is telling facts with the expectation that one will be held to account.**

*“The citizens’ right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world.”*¹²¹

The Supreme Court of India always recognizing the fact that, to know about the governmental organization is a fundamental right of its citizens under Article 19 (1) (a)¹²² of the Constitution of India. The first landmark pronouncement in this respect was made by Justice Mathew in *State of Uttar Pradesh v. Raj Narain* (1975) 4 SCC 428 wherein he stated, “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

¹²¹ *Union of India v. Association for Democratic Reforms* [(2002) 5 SCC 294]

¹²² Article 19 of the Indian Constitution gives, 'Protection of certain rights regarding freedom of speech, etc'.

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. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security”.¹²³

The declaration of Right to Information Act, 2005 set the stage for the transparency in the functioning of the government and its various agencies. Under this Act, access to information from a public agency has become a statutory right of every citizen. In its enactment, it has been contended that the system of government in India is so impervious that ordinary peoples do not have much information about how decisions are made and how public resources are utilized. In effect, RTI Act is a media for greater transparency about the manner of functioning of public agencies. Self-disclosure mandated under section 4 of the RTI Act.¹²⁴ Transparency is required to make the system of public service delivery effective. It allows ready information to the citizens in a manner that they may be able to claim their entitlements. The Supreme COURT in *Shaunak H. Satya case*¹²⁵ held that, “the competent authorities under the RTI Act have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.”

If there is transparency, it shows itself in the working of the organizations. In a good governance Transparency is ethical obligation. Besides disclosure is legal obligation.

3.3.3 JUDICIAL GUIDELINES ON VARIOUS SOCIAL, ECONOMICAL, CULTURAL AND POLITICAL ISSUES

There is no area where the judgments of Supreme Court have not played a significant contribution in the governance, whether it be – environment, food, water, in any natural calamity or disaster, human rights, gender justice, education, minorities, police reforms, elections and limits on constituent powers of Parliament to amend the Constitution.

In the words of former Honourable Chief Justice of India, Shri Y.K. Sabharwal, “The judicial system has an important role to play ultimately in ensuring better public governance. There may be a plethora of regulations, rules and procedures but when disputes arise, they have to be settled in a court of law. There is no area where the judgments of Supreme Court have not played a significant contribution in the governance – good governance – whether it be –

¹²³ <https://www.livelaw.in/supreme-court-judgments-on-rti-act-2005-wither-transparency/>

¹²⁴ For detail see previous unit 2-“Observation of the Court regarding proactive disclosure of Information”

¹²⁵ *The Institute of Chartered Accountants of India v. Shaunak H. Satya* (2011) 8 SCC 781, 8

environment, human rights, gender justice, education, minorities, police reforms, elections and limits on constituent powers of Parliament to amend the Constitution.”¹²⁶

The objectives of the judiciary mentioned in the Beijing Statement¹²⁷ are :

(a) to ensure that all persons are able to live securely under the rule of law; (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and (c) to administer the law impartially among persons and between persons and the State.”

3.3.3.1 INTERPRETATION OF LAW

In a republic, democratic country like India the constitution is the supreme law. It is the judiciary alone which has the power to interpretation the provision of constitution.

Discussion on this subject would be incomplete without a brief reference to landmark decision of *Keshwananad Bharti case*¹²⁸, also known as ‘fundamental right case’. Before discussing this case we must brief a series of cases prior to *Kesavananda Bharti case*¹²⁹.

In the case of *Sri Sankari Prasad Singh Deo v. Union of India and State of Bihar* [1952] S.C.R. 89, the constitutional validity of first amendment (1951), which curtailed the right to property, was challenged. The SC ruled out that the power to amend the Constitution under Article 368 also included the power to amend fundamental rights. In the context of Article 13¹³⁰, "law" must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power with the result that Article 13(2) does not affect amendments made under Article 368.¹³¹

In *Sajjan Singh v. State of Rajasthan* [1965] 1 S.C.R. 933 although the decision in *Sankari Prasad's* case was not challenged Gajendragadkar, C.J. thought it fit to give reasons for expressing full concurrence with that decision. He was of the view that even though the relevant provisions of Part III can be justly described as the very foundation and the cornerstone of the democratic way of life ushered in this country by the Constitution, it cannot be said that the fundamental rights guaranteed to the citizens are eternal and inviolate in the sense that they can never be abridged or amended. He further says that, Parliament would be competent to make

¹²⁶ ROLE OF JUDICIARY IN GOOD GOVERNANCE by Justice Y.K. Sabharwal, Chief Justice of India; https://highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/goodgovernance.pdf

¹²⁷ These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 (As amended at Manila, 28th August, 1997) as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary.

¹²⁸ *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr.*, (1973) 4 SCC 225

¹²⁹ Ibid

¹³⁰ Article 13 (2) of the constitution read as, “The State shall not make any law which takes away or abridges the rights conferred by this Part (part III) and any law made in contravention of this clause shall, to the extent of the contravention, be void.”

¹³¹ http://jajharkhand.in/wp/wpcontent/judicial_updates_files/06_Constitution/01_Basic_Structure/Kesavananda_Bharati_..._vs_State_Of_Kerala_And_An_r_on_24_April,_1973.PDF

amendments in these rights so as to meet the challenge of the problems which may arise in the course of socio-economic progress and development of the country.

In *Golak Nath's* case¹³² the 11 judge bench prospectively overruled its decision in *Shankari Prasad* and *Sajjan Singh* cases and held that Parliament had no power to amend Part III of the Constitution so as to abridge or take away any of the Fundamental Rights. The Bench expressed the view by majority judgment that fundamental rights are given a transcendental position under our Constitution and are kept beyond the reach of Parliament. But, at the same time, Parts III and IV of the Constitution were held to constitute an integral scheme forming a self-contained code. The scheme is so elastic that all the Directive Principles¹³³ can be reasonably enforced without abridging or abrogating the Fundamental Rights.

To nullify the *Golaknath's* verdict, Parliament enacted the 24th Amendment to the Constitution, laying down that its powers to amend the Constitution were unrestricted and unlimited. Finally all the issues related to it was challenged in *Keshavanand* case. A larger Bench of 13 Judges, by majority was overruled the *Golaknath's* verdict and came out with the '**basic structure doctrine**'. It was held that Article 368 does not enable Parliament to amend the Constitution to alter the basic structure of framework of the Constitution.

The Supreme court of India, as a custodian of constitution, always protect the civil, political and fundamental rights of citizens of India. Through 39th amendment Article 329-A was introduced in the Constitution which, inter alia, sought to exclude judicial scrutiny of election of certain Members of Parliament. Which is clearly an undemocratic step by the government. The provision in clauses (4) and (5) of Article 329-A were struck down by a Constitution Bench in the case of *Indira Nehru Gandhi*¹³⁴ applying the basic structure theory of *Keshwanand Bharti case (supra)*.¹³⁵

3.3.3.2 VISHAKA'S GUIDELINES

In 1997, the Supreme Court passed a landmark judgment in the *Vishaka* case¹³⁶ laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. Which later formed the basis of *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.

The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue. These guidelines were stipulated by the Supreme Court of India in above case

¹³² *Golaknath vs. state of Punjab* [1967] 2 S.C.R. 762

¹³³ Part IV of the Constitution of India

¹³⁴ *Smt. Indira Nehru Gandhi v. Shri Raj Narain & Anr.*, 1975 (Supp) SCC 1.

¹³⁵ The consequences of this decision was proclamation of internal emergency from June 1975 to March 1977 during which period Articles 14, 19 and 21 stood suspended.

¹³⁶ *Vishakha and Ors. Vs. satte of Rajasthan & Ors*, (1997) 6 SCC 241, (JT 1997 (7) SC 384)

in 1997, regarding sexual harassment at workplace.¹³⁷ The court decided that the consideration of "International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein." The court held, that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time¹³⁸, it is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women. The detailed guidelines were as follows:¹³⁹

- It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.
- For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as: a) Physical contact and advances; b) A demand or request for sexual favours; c) Sexually coloured remarks; d) Showing pornography; e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature
- Where any of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

¹³⁷ In 1990's Bhanwari Devi, a grassroots worker employed as part of the Women's Development Project (WDP) run by the Government of Rajasthan, tried to prevent child marriage as part of her duties was raped by the landlords of the community. The feudal patriarchs who were enraged by her (in their words: "a lowly woman from a poor and potter community") 'guts' decided to teach her a lesson and raped her repeatedly. The rape survivor did not get justice from Rajasthan High Court and the rapists were allowed to go free. This enraged a women's rights group called 'Vishakha' that filed a public interest litigation in the Supreme Court of India. See https://en.wikipedia.org/wiki/Bhanwari_Devi

¹³⁸ Before 1997, a person facing sexual harassment at workplace had to lodge a complaint under Section 354 of the IPC 1860 that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes an individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman.

¹³⁹ *Vishakha and Ors. Vs. satte of Rajasthan & Ors*, (JT 1997 (7) SC 384); <http://www.nitc.ac.in/app/webroot/img/upload/546896605.pdf>

- All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:
 - A. Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
 - B. the Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
 - C. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
 - D. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment
- Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.
- Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.
- Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.
- The complaint mechanism, referred to above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance

with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

- The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.
- Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.
- Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.
- The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.
- These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

The Sexual Harassment at workplace Bill was passed by the passed on 2 September 2012. It is now *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. It defines sexual harassment as laid down by the Supreme Court in *Vishkha's case*.

3.3.3.3 GUIDELINES ON POLICE REFORMS

The Government of India, on 15th November, 1977, appointed a National Police Commission For fresh examination of the role and performance of the police both as a law enforcing agency and as an institution to protect the rights of the citizens enshrined in the Constitution. The Commission submitted its final report in May 1981. When the recommendations of National Police Commission were not implemented, petition under Article 32 was filed praying for issue of directions to Government of India to frame a new Police Act on the lines of the model Act drafted by the Commission in order to ensure that the police is made accountable essentially and primarily to the law of the land and the people. According to the petitioners, the present distortions and aberrations in the functioning of the police have their roots in the Police Act of 1861, structure and organization of police having basically remained unchanged all these years. After hearing the petition¹⁴⁰ the Supreme Court issued the following guidelines/ directions:

¹⁴⁰ *Prakash Singh & Ors vs. Union of India and Ors*; 2006 (6) Suppl. SCR 473, 2006 (8) SCC 1, 2006 (9) SCALE 444, 2006 (12) JT 225

- Minimum Tenure of I.G. of Police & other officers shall have minimum of at least two years irrespective of his date of superannuation, unless it is found necessary to remove them prematurely, also subject to promotion and retirement of the officer;
- The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people; be ensured that there is full coordination between the two wings;
- There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police; **the interfere of state government in exceptional cases only after recording its reasons for doing so**; the board shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State;
- There shall be a Police Complaints Authority at the district level and at the State level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police and rank of Superintendent of Police and above respectively; also may be headed by a retired District Judge and a retired Judge of the High Court/Supreme Court respectively; The head of the Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts; Authority may also need the services of regular staff to conduct field inquiries; may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization.
- The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority;
- The Central Government shall also set up a National Security Commission at the Union level to prepare a panel or being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organizations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between

them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf.

- The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its secretary.

The aforesaid directions shall be complied with by the Central Government, State governments or Union Territories, as the case may be, on or before 31st December, 2006 or that the bodies afore-noted became operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State governments/Union Territories are directed to file affidavits of compliance by 3rd January, 2007.

The aforesaid **Judgement had positive effect. The government took step in-** Establishment of state security commission; Selection and Minimum Tenure of DGP; Minimum Tenure of I.G. of Police & other officer; Separation of Investigation and law and order police; Establishment of Police Establishment Board; and Establishment of Police Complaints Authority.

3.3.3.4 DIRECTIONS TO THE INVESTIGATING AGENCIES

In *Vineet Narain & ors. v. Union of India & Anr.*, (1998) 1 SCC 226 the Supreme Court of India laid down guidelines to ensure independence and autonomy of the CBI and ordered that the CBI be placed under the supervision of the Central Vigilance Commission (CVC), an independent governmental agency intended to be free from executive control or interference. This directive removed the CBI from the supervision of the Central Government thought to be partly responsible for the inertia that contributed to the CBI's previous lack of urgency with respect to the investigation of high-ranking officials. The CVC was now responsible for ensuring that allegations of corruption against public officials were thoroughly investigated regardless of the identity of the accused and without interference from the Government.

This case created public awareness regarding the issue of corruption, and inspired people to engage with the judicial system through the process of public interest litigation.¹⁴¹

In *Prakash Singh case (supra)*, on the insulation of Police and other investigating agencies from any kind of external pressure, Supreme Court also issued various directions.

3.3.3.5 EDUCATIONAL REFORMS

¹⁴¹ <https://www.escri-net.org/caselaw/2015/vineet-narain-others-vs-union-india-another-1-scc-226>

In *Re. Kerala Education Bill, 1957*, 1959 SCR 995, the reference has been made by the President under article 143(1)¹⁴² of the Constitution of India for the opinion of this Court on certain questions of law of considerable public importance that have arisen out of or touching certain provisions of the Kerala Education Bill, 1957. This bill was aimed at eradicating the malpractices prevalent in the private sector educational institutions, and attempted to regulate the educational institutions' function, including standardizing syllabi and pay structures. There was a provision of takeover of management of educational institutions, which arguably violated the constitution. Nevertheless, the Supreme Court rejected the appeal and the bill received the assent of the president of India.

In the historic judgement in the *Mohini Jain v. State of Karnataka & Ors.* (1992) 3 SCC 666 The apex court held that, an individual cannot be assured human dignity unless his/her personality is developed and the only way to do that is to educate the individual. When the Constitution was framed, 70 percent of the citizens of the country were illiterate. The framers of the constitution hoped to achieve 100 percent literacy within a time period of 10 years. Guided by this hope, Article 41¹⁴³ and Article 45¹⁴⁴ were included in the Chapter IV¹⁴⁵ of the constitution. The Court said that although 'right to education' had not been guaranteed as a fundamental right under Part III of the constitution¹⁴⁶, the Articles 21 (in Part III of the Constitution of India), Article 38, 39(a) (f)¹⁴⁷, 41 and 45 (in Part IV of the Constitution of India) together makes it clear that the framers of the constitution made it obligatory for the State to provide education for its citizens. Article 21 says "*No person shall be deprived of his life or personal liberty except according to procedure established by law*". The right of life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by right to education. Therefore, every citizen had a 'right to education' under the constitution and thus, the state had an obligation to provide educational institutions at all levels for the benefit of all the citizens. All educational institutions whether it was state owned or state recognized were obliged to secure the 'right to education'.

¹⁴² Article 143 of the Indian Constitution gives power to the President to consult Supreme Court.

¹⁴³ Article 41 of the constitution read as, "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

¹⁴⁴ This article of the constitution put duty on the state to make law regarding Provision for free and compulsory education for children within the 10 years of commencement of the constitution. Later the Right of Children to Free and compulsory Education Act, 2009 envisages free and compulsory elementary education to every child in the age group of 6-14 years which came into effect from April 1, 2010,

¹⁴⁵ Part IV of the Constitution provided- 'Directive Principles of State Policy'

¹⁴⁶ Later by the Constitution (Eighty-sixth Amendment) Act, 2002, article 21A was inserted, which guaranteed the Right to education.

¹⁴⁷ Article 38 direct to State to secure a social order for the promotion of welfare of the people and article 39 says about 'Certain principles of policy to be followed by the State';

The fundamental rights guaranteed under Part III of the constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individual dignity. Education is instrumental to reduce the inequality, and ensuring adequate livelihood. Illiterate people is vulnerable to exploitation. Without education the vision expressed in the said articles of the Constitution cannot be realized. The court said that the 'Directive Principles', which were fundamental in the governance of the country, cannot be isolated from the fundamental rights guaranteed under Part III. They were supplementary to each other and have to be read into the fundamental rights. The Court made significant remark that, if government recognises or approve a professional institution to run a professional course, it is State responsibility to ensure that the Institute should charge the government rates only and right to education is preserved.

The judgment of the Supreme Court has huge significance in a context of state's failure to maintain the endeavor set by article 45 of the Constitution even after 40 years of independence. However In *Unni Krishnan, J.P. And Ors. Etc. vs State Of Andhra Pradesh And Ors.* (1993) 1 SCC 645; the court held that, the citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and para meters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.

In *St. Xaviers College v. Gujarat*, [1975] 1 S.C.R. 173 it has been held uniformly by all the nine learned Judges that there is no fundamental right to affiliation. The institution has to seek such recognition or affiliation from the appropriate agency.

SUPREME COURT'S JUDGEMENT FREEING UNAIDED EDUCATIONAL INSTITUTIONS FROM THE STATE'S RESERVATION POLICIES

In *P.A. Inamdar & Ors. v. State of Maharashtra & Ors.* (2005) 6 SCC 537 Supreme Court delivered a unanimous judgement by 7 judges (on August 12, 2005) declaring that the State can't impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges. This judgement was an attempt to bring clarity to two previous judgements by the Supreme Court. One is the *Pai Foundation case*¹⁴⁸ and second is the *Islamic Academy of Education case*¹⁴⁹. The Supreme Court in its judgement on August 12, 2005 ruled

¹⁴⁸ *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.* (2002) 8 SCC 481;

¹⁴⁹ *Islamic Academy of Education & Anr. v. State of Karnataka & Ors.* (2003) 6 SCC 697

on the following issues in relation to minority and non-minority unaided higher education institutions:

1. Reservation policy- Neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution.
2. Admission policy- Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom. However, different considerations would apply for graduate and post-graduate level of education, as also for technical and professional educational institutions. **But no compromise on Transparency and merit.**

3.3.3.6 DIRECTION TO THE ELECTION COMMISSION

In *Union of India Vs. Association for Democratic Reforms & Another*, (2002) 5 SCC 294, it was contended that despite the Reports of the Law Commission and Vohra Committee, successive governments have failed to take any action and — therefore, petition was filed for implementation of the these reports and for a direction to the Election Commission to make mandatory for every candidate to provide information by Amending Form 2-A to 2-E prescribed under the Conduct of Election Rules, 1961.

The court stated, *“In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted...”*

In aforesaid case, The Election Commission is directed (Date of Order: 02.05.2002) to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:-

- (1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past - if any, whether he is punished with imprisonment or fine?
- (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of Law. If so, the details thereof.
- (3) The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependants.
- (4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.
- (5) The educational qualifications of the candidate.

It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms

and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months.

3.3.3.7 THE PRISONERS, LIKE ALL HUMAN BEINGS, DESERVE TO BE TREATED WITH DIGNITY

The Social Justice Bench comprising of Justices Madan Lokur and R.K.Agrawal, of the Supreme Court of India¹⁵⁰ issued guidelines relating to Prison Reforms in the Country. “...*even though Article 21 of the Constitution requires a life of dignity for all persons, little appears to have changed on the ground as far as prisoners are concerned and we are once again required to deal with issues relating to prisons in the country and their reform*”. Bench also issued orders on 24th April 2015 directing ministry of Home Affairs regarding:

- The Bureau of Police Research and Development undertakes a review of the Model Prison Manual within a period of three months; and
- Under Trial Review Committee is established within one month in all districts and the next meeting of that Committee in each district should be held on or about 30th June, 2015.

The bench issued further orders on 18th September, 2015 and 16th October, 2015. The court observed that prisoners, *like all human beings, deserve to be treated with dignity*. Finally the Bench issued the following Directions on 5th February 2016:

1. The Under Trial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31st March, 2016. The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.
2. The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.
3. The Member Secretary of the State Legal Services Authority of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every

¹⁵⁰ *In Re-Inhuman Conditions in 1382 Prisons*; <https://www.livelaw.in/prisoners-like-all-human-beings-deserve-to-be-treated-with-dignity-sc-issues-landmark-guidelines-on-prison-reforms/>

district, that an adequate number of competent lawyers are empanelled to assist undertrial prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid.

4. The Secretary of the District Legal Services Committee will also look into the issue of the release of undertrial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.
5. The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc.
6. The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of the prison and prisoners. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society.
7. The Model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.
8. The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual.

Apart from above guidelines, the Bench also directed Ministry of Women and Child Development, to prepare a Manual like 'Prison Manual' which will take into consideration the living conditions and other issues pertaining to juveniles who are in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Prior to above decision the court deals with the right of prisoners in the case of *Sunil Batra (II) vs. Delhi administration*, 1980 3 SCC 488. In *Rama Murthy vs State of Karnataka* (1997) 2 SCC 642 this court identify nine issues facing prisons and needing reforms. In *T.K. Gopal vs. State of Karnataka*, (2000) 6 SCC 168; the court advocated a therapeutic approach in dealing with the criminal tendencies of the prisoners.

3.3.3.8 PROTECTION OF ENVIRONMENT

The judiciary playing a pro-active role in the matters involving environment. The Court has consistently expressed concern about impact of pollution on ecology in present and in future and the obligation of the State to anticipate, prevent and attach the causes of environmental

degradation and the responsibility of the State to secure the health of the people, improve public health and protect and improve the environment.¹⁵¹

3.3.3.9 ISSUE OF UNIFORM CIVIL CODE

The constitution has a provision for Uniform Civil Code under Article 44 as a Directive Principle of State Policy. Such a uniform law is necessary to not only promote legal uniformity but also it would do justice to the diversities that are present in our country by bridging the unintentional discrimination that the personal law brings forth among the citizens. The Judiciary through its various judgements time and again has always upheld gender justice in cases pertaining to the Uniform Civil Code.

The Supreme Court of India for the first time directed the Indian Parliament to frame a Uniform Civil Code in 1985 in the case of *Mohammad Ahmed Khan v. Shah Bano Begum* (1985) 2 SCC 556 popularly known as *Shah Bano case*, the Supreme Court held that “It is also a matter of regret that Article 44 of our Constitution has remained a dead letter.” This case also raised a debate about the rights of women and application of principle of equality. The consequence of this case is, *The Muslim Women (Protection of Rights on Divorce) Act, 1986*, that nullified the Supreme Court's judgment in the favour of muslim woman.

Then in *Sarla Mudgal (Smt.), President, Kalyani and others v. Union of India and Others* AIR 1995 SC 1531 the Apex Court while delivering the judgment directed the Government to implement the directive of Article 44 and to file affidavit indicating the steps taken in the matter and held that, “Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Article 44, Therefore the Supreme Court requested the Government of India, through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and endeavour to secure for its citizens a uniform civil code throughout the territory of India.”

The Apex Court pursued the same line in *Lily Thomas etc. v. Union of India and others* AIR 2000 SC 1650 and held that the desirability of Uniform Civil Code can hardly be doubted.

3.3.3.10 TRANSPARENCY WITHIN THE JUDICIARY

In *Subhash Chandra Agarwal vs. The Registrar, Supreme Court of India & ors.* -the appellant filed an application seeking the information relating to the details of the medical facilities availed by the individual judges and their family members of the Supreme Court in last three

¹⁵¹ See *M.C. Mehta v. Union of India* [(1986) 2 SCC 176]; *Indian Council for Enviro-Legal Action v. Union of India* [(1996) 3 SCC 212]; *Vellore Citizens' Welfare Forum v. Union of India* [(1996) 5 SCC 647]; *M.C. Mehta v. Kamal Nath*, [(1997) 1 SCC 388]; *S. Jagannath v. Union of India*, [(1997) 2 SCC 87]; *M.C. Mehta (Taj Trapezium Matter) v. Union of India*, [(1997) 2 SCC 353]; *M.C. Mehta (Calcutta Tanneries' Matter) v. Union of India*, [(1997) 2 SCC 411]; *M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India* [(1997) 3 SCC 715]; *Bittu Sehgal v. Union of India*, [(2001) 9 SCC 181] and *M.C. Mehta v. Union of India*, [(2002) 4 SCC 356].

years including the information relating to expenses on private treatment in India or abroad. By order dated 03.08.2011, the CIC directed the CPIO to provide the total amount of medical expenses of individual judges reimbursed by the Supreme Court during the last three years both in India and abroad wherever applicable. There was also a direction that the CPIO shall bring to the notice of the competent authority in the Supreme Court and ensure that arrangements are made in future for maintaining the information as expected in Section 4(1)(a) of the RTI Act. By letter dated 30.08.2011, the CPIO informed the appellant herein that the judge-wise information regarding actual total medical expenditure is not required to be maintained and is not maintained. Thereupon by order dated 01.02.2012 the CIC reiterated its directions dated 03.08.2011. Aggrieved by the said order, the appellant herein filed W.P. (C) No.1842/2012. The court then held that, the said information is personal information which is exempted from disclosure under Section 8(1)(j) of the RTI and held invasion of the privacy.

Placing reliance upon the decisions in *State of UP Vs. Raj Narain*, AIR 1975 SC 865, *S.P. Gupta Vs. President of India & Ors.*, AIR 1982 SC 149 and *Union of India Vs. Association for Democratic Reforms*, AIR 2002 SC 2112 it is further contended by the learned counsel that the object and purpose of the RTI Act being promoting transparency and accountability in spending the public money to strengthen the core constitutional values of a democratic republic, the information sought by the appellant relating to reimbursement of medical bills of the individual judges, under no circumstances, can be termed as exempted information under Section 8(1)(j) of the Act.

On the other hand, from the respondent, the learned Senior Counsel relied upon *Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors.* 2011 (8) SCC 497 and *Girish Ramchandra Deshpande Vs. Central Information Commissioner & Ors.* (2013) 1 SCC 212; contending that, the RTI Act contains certain safeguards by providing exemption from disclosure of certain information including the information which would cause unwarranted invasion of the privacy of the individual except where the larger public interest justifies the disclosure of such information.

Giving the argument, that since the total expenditure incurred for the medical treatment of the judges for the period in question was already furnished by the CPIO by his letter dated 30.08.2011 and in the absence of any such larger public interest, no direction whatsoever can be issued under Section 19(8) (a) (iv) of the Act by the appellate authorities. The appeal was dismissed by judge hon'ble Ms. Justice Deepa Sharma.¹⁵²

ASSETS DECLARATION BY JUDGES

A full court resolution was passed by the Supreme Court in 1997, as per which, the Supreme Court judges were mandated to disclose their assets to the Chief Justice of India. On Nov 11, 2007, RTI activist Subhash C Aggarwal files a plea in the Supreme Court seeking information

¹⁵² April 17, 2015

on judges' assets. Information denied in the reply to him. First appeal filed at SC's registry against the denial of information was dismissed. Appellant approaches CIC on Jan 6, 2009. The CIC asks the SC to disclose information on Judges' assets on the ground that CJI's office comes within the ambit of RTI Act. SC moves Delhi HC against CIC order.¹⁵³ The Delhi High Court stays the CIC order and asks the noted constitutional expert Fali S Nariman to assist it in deciding the legal issue. Nariman, however, refuses to assist the court saying that he is of the view that Judges must declare their assets and he would not be able to be impartial in the case. SC says that declaration of assets by its judges to the Chief Justice are "personal" information which cannot be revealed under the RTI Act. SC says that its judges are not averse to declaring their assets and Parliament can enact a law pertaining to such declaration but it must be ensured that the law is not misused. Delhi High Court Bar Association moves impleadment application in HC saying that Judges should voluntarily declare assets. SC says too much transparency can affect independence of judiciary. On Sep 2, 2009, Single Bench of High Court upholds CIC's order saying that CJI's office comes within the ambit of RTI Act and judges' assets be made public under the transparency law. The Apex Court challenges single bench verdict before division bench. HC agrees to give an urgent hearing to the Supreme Court's petition. HC admits the appeal and constitutes a special three-judge bench to decide the issue. On Nov 12, 2009 HC observes that the resolution passed by the Supreme Court judges for declaring their assets to CJI is binding on them. On Jan 12, 2010, HC held against appeal that, the office of CJI comes within the ambit of the RTI Act.

According to the present scenario New CJI Ranjan Gogoi is one of the 10 Supreme Court judges, who voluntarily declared assets. Of the 14 Supreme Court judges who haven't declared assets, two are set to become Chief Justice of India.

3.4 SUMMARY

Governance is the process of decision-making and the process by which decisions are implemented. Government is one of the actors in governance. Good governance must be responsive to administration and has fair legal system to provide protection to societal members. Good governance regards accountability, transparency, openness, predictability, participation, political legitimacy, freedom of association and participation in the process of governance, an established legal outline based on the rule of law and the independence of judiciary to protect human rights and freedom of information and expression. It is believed that a good governance system is a democratic system. It is participatory, transparent, accountable and equitable and it promotes the rule of law. Part IV of the Indian Constitution provides for Directive Principles of State Policy. Though these principles are guidelines and are not enforceable in a court of law however they are indispensable in the governance of the country. They provided a roadmap for welfare government. A Government is expected to be fully

¹⁵³ *The CPIO, Supreme Court of India, Tilak Marg, New Delhi vs. Subhash Chandra Agarwal & Anr.* W.P. (C) 288/2009

accountable to its people and transparent in the use of public resources. It assures that corruption is minimized, the view of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society. In democracy all citizens have a right to participate in the decision-making processes that lead to adoption of policies that are applicable to the societies.

Judiciary in India has a very significant position because it has been made the guardian and custodian of the Constitution. The court issuing orders in cases that affect almost every aspect of Indian public life. The Court has ordered that taxis and buses be switched to natural gas in Delhi, regulated encroachment on and preservation of public forests, and implemented guidelines for school bus safety, along with many other details of governance.¹⁵⁴ In *Hussainara Khatoon and others v. Home Secretary State of Bihar* AIR 1979 SC 136, court gave emphasis on free legal aid to poor and need for a reasonable, fair and just procedure. In *Ichhu Devi Choraria v. Union of India* 1980 SCC 531, the court held that personal liberty is a most precious possession and that life without it would not be worth living.

The aforesaid cases given in this unit are the few example. The role of judiciary enhancing good governance, transparency and disclosure is crucial and beyond the description.

3.5 GLOSSARY

SUPREMA LEX: it is a Latin phrase meaning- "The welfare of the people shall be the supreme law"

IPC: the Indian Penal Code (IPC) is the official criminal code of India. It came into force in British India during the early period in 1862.

Cr.P.C.: The Code of Criminal Procedure (CrPC) is the main legislation on procedure for administration of substantive criminal law in India. It was enacted in 1973 and came into force on 1 April 1974. It provides the machinery for the investigation of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the determination of punishment of the guilty.

CJI: The Chief Justice of India is the head of judiciary of India and the and the Supreme Court of India. As head of the Supreme Court, the chief justice is responsible for the allocation of cases and appointment of constitutional benches which deal with important matters of law. On the administrative side, the Chief Justice carries out the following functions: maintenance of the roster; appointment of court officials and general and miscellaneous matters relating to the supervision and functioning of the Supreme Court.

3.6 SAQS

¹⁵⁴ *M.C. Mehta vs. Union of India*, Writ Petition (Civil) No. 13029 of 1985, Order Dated 29th July 1998 (Delhi pollution case)

I. SHORT ANSWER QUESTION

1. Who has power to decide whether an authority under the Constitution has acted within the limits of its power or exceeded it. The court; see 3.3.1
2. Which article of Indian Constitution guaranteed equality before the law or the equal protection of the laws to all its citizens. Article 14; see 3.3.1.2
3. In which case the Supreme Court stated that, 'No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government.'. Union of India v. Association for Democratic Reforms and Anr. (2002) 5 SCC 294; see 3.3.1.4
4. Which landmark court case formed the basis of *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. *Vishakha and Ors. Vs. satte of Rajasthan & Ors*, (1997) 6 SCC 241, (JT 1997 (7) SC 384); see 3.3.3.2

II. FILL IN THE BLANKS

1. The word '.....' is used for the process by which the decision are taken and then implemented.
2. True democracy cannot exist without the participation of its..... .
3. Right to information is the formidable tools in the hands of responsible citizens to fight corruption and to bring in and..... .
4. Through the government framing policies to cater future needs and achieve goals successfully.
5. A is necessary to not only promote legal uniformity but also it would do justice to the diversities that are present in our country by bridging the unintentional discrimination that the personal law brings forth among the citizens.

III. TRUE AND FALSE STATEMENT

- II. The maker of the constitution gives duty to the judiciary as 'custodian of the Indian Constitution'. (true/false)
- III. Rule of law means legal frameworks should be fair and enforced impartially. (true/false)
- IV. A good governance is responsive to the not only present but also to the future needs of its organization. (true/false)
- V. A good governance should make development that meets the needs of the present even at the cost of nature. (true/false)
- VI. Through its judgement in the *Pai Foundation case*, Supreme Court brings clarity in relation to minority and non-minority unaided higher education institutions. (true/false)

3.7 REFERENCES

1. ROLE OF JUDICIARY IN GOOD GOVERNANCE; An article by Justice Y.K. Sabharwal, Chief Justice of India; https://highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/goodgovernance.pdf
2. <https://en.wikipedia.org/wiki>
3. <https://lawbriefs.in/prakash-singh-ors-vs-union-of-india-and-ors-police-reforms-case-guidelines-framed-by-the-supreme-court-of-india-on-police-reforms/>
4. http://shodhganga.inflibnet.ac.in/bitstream/10603/132545/21/21_appendix%204.pdf
5. <http://ceojammukashmir.nic.in/pdf/LandmarkJudgementsVOLIV>.
6. <https://www.ndtv.com> › India
7. <http://www.lawof.in/uniform-civil-code-indian-judiciary-atish-chakrabortyi/>
8. <https://www.iasscore.in/topical-analysis/keshavananda-bharti-vs-state-of-kerala>
9. https://open.unido.org/api/documents/6013703/download/Good%20Governance%20Guidelines_English%20A5_31.3.pdf
10. https://www.right2info.org/resources/publications/case-pdfs/india_union-for-civil-liberties-pucl-and-another-v.-union-of-india-and-another
11. http://jajharkhand.in/wp/wpcontent/judicial_updates_files/06_Constitution/01_Basic_Structure/Kesavananda_Bharati...vs_State_Of_Kerala_And_Anr_on_24_April,_1973.PDF
12. <http://www.nitc.ac.in/app/webroot/img/upload/546896605.pdf>
13. <https://www.livelaw.in/prisoners-like-all-human-beings-deserve-to-be-treated-with-dignity-sc-issues-landmark-guidelines-on-prison-reforms/>
14. <https://cic.gov.in/sites/default/files/court%20orders/SCF.pdf>
15. <https://dsscic.nic.in/cause-list-report-web/view-decision-yesterday/1>

3.8 SUGGESTED READINGS

1. The Constitution of India
2. Dr. Durga Das Basu, Introduction to the Constitution of India; LexisNexis Butterworths Wadhwa, Nagpur
3. ROLE OF JUDICIARY IN GOOD GOVERNANCE; An article by Justice Y.K. Sabharwal, Chief Justice of India;
4. <https://www.escri-net.org/caselaw/2015/vineet-narain-others-vs-union-india-another-1-scc-226>
5. <http://ceojammukashmir.nic.in/pdf/LandmarkJudgementsVOLIV>.

6. https://www.right2info.org/resources/publications/case-pdfs/india_union-for-civil-liberties-pucl-and-another-v.-union-of-india-and-another
7. http://jajharkhand.in/wp/wpcontent/judicial_updates_files/06_Constitution/01_Basic_Structure/Kesavananda_Bharati_..._vs_State_Of_Kerala_And_An_r_on_24_April,_1973.PDF
8. <https://cic.gov.in/sites/default/files/court%20orders/SCF.pdf>
9. <https://dsscic.nic.in/cause-list-report-web/view-decision-yesterday/1>

3.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. What are the basic features of a good governance?
2. Transparency is the basis of good governance and the first step in fighting corruption.' Explain.
3. What is the difference between transparency and disclosure?
4. What do you understand by the 'Basic structure doctrine'?
5. Write the guidelines issued by the court in *Vishakha's case*.
6. Uniform civil code is closely associated with gender justice in India. Explain your views.
7. Write a brief note on police reforms.
8. What is the importance of *Vineet Narain case*?
9. Did in *Unni Krishnan case* the Supreme Court reversed its previous decision given in *Mohini Jain's case*?
10. Write short not on 'Supreme Court's judgement freeing unaided institutions from the state's reservation policies'.
11. What kind of information are necessary to disclose for each candidate seeking election to Parliament or a State Legislature?
12. Are the criminals who pose threat to the law and order and peace of society, deserve to be treated with dignity during prosecution?
13. Can too much transparency affect independence of judiciary? Give a critical analysis.

3.10 ANSWER SAQS

I. SHORT ANSWER QUESTION

1. The court; see 3.3.1
2. Article 14; see 3.3.1.2
3. *Union of India v. Association for Democratic Reforms and Anr.* (2002) 5 SCC 294; see 3.3.1.4
4. *Vishakha and Ors. Vs. sattu of Rajasthan & Ors.* (1997) 6 SCC 241, (JT 1997 (7) SC 384); see 3.3.3.2

II. FILL IN THE BLANKS

Judiciary and Important Legislature effecting RTI

1. 'governance'; See 3.3.1
2. Citizens; See 3.3.1.1
3. Transparency, accountability; See 3.3.1.4
4. strategic vision; See 3.3.1.9
5. uniform civil law; See 3.3.3.8

III. TRUE AND FALSE STATEMENT

1. True; See 3.3.1
2. True; See 3.3.1.2
3. True; See 3.3.1.5
4. False; See 3.3.1
5. False; See 3.3.3.5

TERMINAL AND MODEL QUESTIONS

1. See 3.3.1
2. See 3.3.2
3. See 3.3.2
4. See 3.3.3.1
5. See 3.3.3.2
6. See 3.3.3.8
7. See 3.3.3.3
8. See 3.3.3.4
9. See 3.3.3.5
10. See 3.3.3.5
11. See 3.3.3.6
12. See 3.3.3.7
13. See 3.3.3.10

Unit-4

Supreme Court on Right to Information

4.1. INTRODUCTION

4.2. OBJECTIVES

4.3. SUBJECT

4.3.1. Right to Know

4.3.2. Right to Information as a Human Right

4.3.3. RTI flows from Freedom of Speech

4.3.4. RTI as an essential ingredient of democracy

4.3.5. Right to Information and good Governance

4.3.6. Right to Information and Right to Privacy

4.3.7. RTI Act applies only to the information available on record

4.3.8. Right to Information and Citizen's right to vote

4.3.9. RTI of the accused person

4.3.10. RTI: a limited right

4.3.11. Exemptions from Disclosure of Information

4.3.12. Personal Information

4.3.13. Judiciary and the Right to Information

4.3.14. Disclosure of Information and Public Interest

4.4. SUMMARY

4.5. SAQS

4.6. REFERENCES

4.7. SUGGESTED READINGS

4.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

4.1. INTRODUCTION

The Apex Court in India plays a vital role in interpreting the laws and filling up the existing gaps in the legislation. The role of Indian judiciary in relation to right to information law is remarkable. Time and again the Supreme Court had emphasised the importance and relevance of right to information for bringing transparency and strengthening democracy in the government. There are number of judgements of the Supreme Court dealing with various issues related to right to information.

4.2. OBJECTIVES

The study of the chapter will make students understand

- the Supreme Court observations and views with regard to right to information.
- the Supreme Court's interpretation of right to information
- judicial approach towards various allied aspects of RTI

4.3. SUBJECT

4.3.1. Right to Know

RomeshThappar v State of Madras was one of the earliest cases where the Supreme Court laid emphasis on the people's right to know. In this case, the petitioner had challenged an order that imposed ban on the circulation of the petitioner's journal. This order was issued by the then Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949. This ban was struck down as violative of the right to freedom of speech and expression under Article 19(1)(a). Following the trend in *Hamdard Dawakhana v. Union of India*, the right to information was declared to be part of Article 19 (1) (a) of the Constitution of India by the Supreme Court. The Apex Court has played a vital role in granting right to information, a constitutional status via interpretation of Article 19 (1) (a).

It was the landmark judgment of *State of Punjab v. Sodhi Sukhdev Singh* where the seeds of right to information were sowed by the Apex court. In this case the decision was in favour of the state to withhold documents under Section 123 of the Indian Evidence Act. But in his dissenting opinion, Justice Subba Rao observed that at the time when the Indian Evidence Act, 1872 was passed, the concept of welfare State was not evolved in India and therefore, the word "affairs of State" used in Section 123 of Indian Evidence Act, 1872 could not have comprehended the welfare activities of the State. He further observed that if non disclosure of a particular State document was in public interest the impartial and uneven dispensation of justice by Court was also in public interest. Thus, the final authority to allow or disallow the disclosure of document lies with the Court after the inspection of the document.

Similarly in the same fashion, the Apex Court in *Amar Chand Butail v. Union of India* secured freedom of information to citizens on the basis of public interest doctrine. Following the trend the Summit Court in *Bennett Coleman v Union of India*, where it held Newsprint Control Order of 1972-1973 issued under the Essential Commodities Act, 1955 to be ultra vires Article 19 (1) (a) of the Constitution. Ray, CJ in the majority judgment opined that, "It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of press embodies the right of the people to read." Here what is referred as "right of the people to read" refers to the right of the readers to get the information.

In the landmark case of *State of U. P. v. Raj Narain*, the Supreme Court held that "government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries." The facts of this case were that Raj Narain who challenged the validity of Mrs. Gandhi's election required disclosure Blue Books which contained the tour program and security measures taken for the Prime Minister. Though the disclosure was not allowed, Mathew, J. held that the people of country were entitled to know the particulars of every public transaction in all its hearing.

In the similar fashion the Summit Court in *Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd.* recognized the right to know as emanating from the right to life. The question which arose was whether Reliance Petrochemicals Ltd. was entitled to an injunction against Indian Express which had published an article questioning the reliability of the former's debenture issue. Justice Mukherji the learned Judge, observed: "We must remember that the people in large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age on our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform.

4.3.2. Right to Information as a Human Right

Right to information has been considered to be a human right by several judgments of the Apex court. This right emanates from the right to life as well as from the right to freedom of speech and expression enshrined in the constitution of India.

In *People's Union for Civil Liberties v. Union of India*, The Supreme Court held that right to information is a human right and for the attainment of the right it is necessary to make the government transparent and accountable. In this case, the Court observed that a true democracy cannot be achieved if the citizens do not have right to participate in the affairs and policies of the government through their elected representatives. This is possible only when the citizens

are well informed on matters of public interest and they are called upon to express their views frankly.

In *Centre for PIL v. Union of India*, the Supreme Court supported and accelerated the movement for a national law on freedom of information, which eventually led to the enactment of Right to Information Act, 2005. It is an example of vigilant citizenry and civil society working towards transparency and openness in the system of governance.

4.3.3. RTI flows from Freedom of Speech

Even before the enactment of the Right to Information Act, 2005, the Supreme Court in a number of cases had observed that right to freedom of speech and expression guaranteed to citizens under Article 19(1)(a) of the Constitution include within it right to receive and impart information. This means right to information is implicitly imbibed within the Constitutional framework. In the case of *Secretary, Ministry of Information & Broadcasting v Cricket Association of Bengal* the Supreme Court held that for ensuring the right of freedom of speech and expression to the citizens of India, it is necessary that they have plurality of view and a large range of opinions on public issues. It was further held that "A successful democracy posits an aware citizenry. Diversity of opinions, ideas, views and ideologies is an essential requirement which enables the citizens to arrive at informal judgments on all issue concerning them".

The supreme Court in the landmark case of *State of U.P. v. Raj Narain* held that the right to information flows from the freedom of speech and that the people of this country have a right to know every public act that is done in a public way by the public functionary and are entitled to know the particulars of every public transaction in all its bearing.

In *Namit Sharma v. Union of India*, the Supreme Court held that, in order to determine the value of any freedom, the extension of people's enjoyment over such freedom played an important role. Being the nation as constitutional democratic, all the citizens are entitled to know what their elected government is doing for them and what policies are made for their welfare. Though this freedom is also not absolute and restricted through some limitations like some of the other freedoms.

It is a clear and settled principle that the right to receive and impart any information is included with in the concept of right to freedom of speech and expression provided under Article 19(1) (a) of the Constitution of India.

4.3.4. RTI as an essential ingredient of democracy

Right to information is an essential tool to achieve true democracy. This was consistently concluded in many verdicts of the Supreme Court.

As in the case of *Reliance Petrochemicals Ltd. v. Proprietors, Indian Express Newspapers, Bombay (P.) Ltd.*, the Supreme Court interpreted Article 21 of the Constitution to include within it right to know. According to the court, right to know is a necessary ingredient of a participatory democracy.

The Supreme Court in its decision in *Bennett Coleman and Co v. Union of India* case observed that “the faith of the citizens in popular democratic government rests on the old dictum. Let the people have the truth and freedom to discuss”.. It was further observed that “The liberty of the press gives people right find out what ideas are correct. Therefore, it is not so much for the benefit of the press as it is for the benefit of the public....freedom of speech includes within its compass the right of all citizens to read and be informed.”

4.3.5. Right to Information and good Governance

The right to information is an effective tool for bringing good governance. Justice Bhagwati in *S. P. Gupta v. Union of India* observed that “ No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only when the people know how Government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy”.

4.3.6. Right to Information and Right to Privacy

There arises an issue of conflict between the right to information and right to privacy. Undoubtedly, the right to information has to be reconciled with the other legal rights or interests protected by law, such as fundamental right to privacy under Article 21 of the Constitution of India.

In *Vijay Prakash v. Union of India*, the petitioner sought information regarding his wife’s service records for establishing his case in a matrimonial dispute. The request for information was denied by the Public Information Officer on the ground of privacy as it is pertaining to personal information which was exempted under Section 8 (1) (j) of the RTI Act and disclosure of such information had no relation with any public interest. The court held that though there is no substantive difference between the privacy right of a private person and that of a public servant, yet the degree of protection afforded to a private person’s right is greater than that afforded to public servant. Where, in a particular case, the important value of disclosure of personal information is shown, the protection under Section 8 (1) (j) may not be available. Therefore, in such a case, it is advisable that the Information Officer should issue notice to the concerned individual as a third party and consider his/her view as to why there should be no disclosure of information sought.

In the case of *Govind v. State of Madhya Pradesh*, the Supreme Court observed that, “there can be no doubt that claims regarding privacy and dignity are to be examined with care and to be

denied only when an important countervailing interest is shown to be superior". It was further held that a claimed right is entitled to be protected as a fundamental privacy right, the law infringing it must satisfy the compelling 'State interest' test. This means the thing to be considered whether a state interest is of such paramount importance as would justify an infringement of the privacy right. The Court in this case observed that when there is a competition between the right to privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves larger public interest.

Again, the Apex Court in *Tarak Singh v. Jyoti Basu*, held that where there is a conflict between the public interest and private interest, the former shall prevail over the latter.

The information may not be disclosed where it is related to private life of a person. This is an exception provided under Section 8(1)(j) of the RTI Act dealing with the informations exempted from disclosure. The Supreme Court in *R. Rajagopal v. State of Tamil Nadu* was called upon to decide the ambit of privacy as an exception to the applicability of the right to information. In this case the petitioner who was the editor, printer and publisher of a Tamil weekly, agreed to publish the autobiography of one Shankar who had been convicted of murder and sentenced to death. The autobiography was to reveal the close association of some police officers in the crimes committed by Shankar. Therefore, the police authorities had issued a warning to the petitioner against the publishing autobiography of Shankar. The first grounds of objection was that Shankar had not given the publisher power of attorney for such publication and second such publication would result in violation of privacy and would amount to blackmailing. The petitioner moved the court praying for restraining the police from interfering with the publication of the said book because it would amount to unreasonable restrictions upon the right to disseminate information included in the right of freedom of speech and expression. The court held that petitioner had the right to publish the autobiography of Shankar insofar as it appeared from the official records even without the permission from the prison authorities, but if it went beyond the public records, it would be violative of right to privacy.

The Supreme Court in *Tokugha Yephom v. Appollo Hospital Enterprises Ltd.* held that right to privacy as one of the human rights is not treated as absolute and is subject to such action as may be lawfully be taken for the prevention of crime or disorder or protection of health or morals or protection of rights and freedoms of others.

4.3.7. RTI Act applies only to the information available on record

The Supreme Court in *Central Board of Secondary Education and another v. Aditya Bandopadhyay and Others*, made it clear that the information which is not held by or under the

control of any public authority and which is not held by or under the control of any public authority under any law for the time being in force, does not fall within the scope of RTI Act. The Act provides access to information which is already available and existing in records and not to any non-available information.

4.3.8. Right to Information and Citizen's right to vote

The Supreme Court recognised the right of citizens to know about the particulars and details of the Candidate who are contesting election as people's representative. Commenting on right of voters to know about the contestants in election, the Supreme Court in *Union of India v, Association for Democratic Reforms*, observed that voters must be well informed about the contesting candidates and such information should include assets held by the candidate, his educational qualifications, marital status and antecedents of his past life, whether he was ever charged of an offence, convicted or criminal cases pending against him.

The Apex court in *Dinesh Trivedi, MP v. Union of India* reiterated that in order to maintain purity of elections and in particular, to bring transparency in the process of election, the Election Commission can ask the contesting candidates about the expenditure incurred by the political parties. In a democracy the electoral process has a strategic role. Every citizen of the country has a basic elementary right to know full particulars of a candidate who is to represent him in Parliament or State Legislature where the laws are enacted.

In the case of *P.V. Narsimha Rao v. State* the Supreme Court has made it clear that disclosure of assets and liabilities from the candidates filing nomination papers for election is not intended to evaluate his financial capacity to meet the expenditure for election. The only purpose of such requirement of disclosure is to let the voters judge the fitness of the candidate in terms of his antecedents and capacity to serve the public.

4.3.9. RTI of the accused person

The Supreme Court in the historic case of *D. K. Basu v. State of West Bengal*, recognised the right to information of a person arrested with a view to making the police more transparent and accountable while dealing with the persons arrested or taken into custody by them. The Court insisted upon transparency and accountability as effective safeguards to prevent abuse of police powers. The court issued eleven guidelines in its judgement to be followed in all cases of arrest or detention until legal provisions are made in that behalf.

Some of them are as follows:

- A person who has been arrested and being held in custody in the police station or lock up or interrogation centre, shall be entitled to inform his relative, friend or other person known to him or having interested on his welfare, about his arrest and place where he is detained or kept.

Judiciary and Important Legislature effecting RTI

- The time and place of arrest must be notified by the police or arresting authority within 8 to 12 hours of such arrest.
- The person arrested must be informed about his right to have someone informed of his arrest or detention.
- The arrestee must be permitted to meet his lawyer during interrogation.

4.3.10. RTI: a limited right

RTI is not an absolute right. Certain restrictions can be imposed in the interest of the society. The Supreme Court in *District Registrar v. Canara Bank* reiterated there may be circumstances when information sought by the applicant under Section 6 of RTI Act may be refused in the larger interest of the society.

In *Prabha Dutt v. Union of India*, the Supreme Court held that right to information being integral part of the right of freedom of speech is subject to restrictions that can be imposed upon that right under Article 19 (2) of the Constitution. Therefore it cannot be said to be an absolute right.

4.3.11. Exemptions from Disclosure of Information

There are several information which are exempted from disclosure. These are provided in the Act itself. In the case of *M. S. M. Sharma v. Shri Krishna Sinha*, the speaker had expunged a portion of the speech of a Member of House, which meant as if that portion was not spoken. Despite that, a newspaper published that expunged portion thus committing breach of privilege of the House. Any information regarding such expunged utterances by Member cannot be accessed under the RTI Act. They are privileged communication and thus protected from disclosure.

In *Doypack System (P) Ltd. v. Union of India*, the Supreme Court held that it was the Court's duty to prevent disclosure of documents where Article 74 (1) of the Constitution was applicable. It was held in this case that Cabinet papers are protected against disclosure not by reason of their contents, but because of the class to which they belonged. The papers brought into existence for the purpose of preparing submission to the Cabinet were also Cabinet papers and therefore, their disclosure was rightly denied.

The Supreme Court in *Akhil Bharat Gauseva Sangh v. State of Andhra Pradesh*, held that there is no right to demand information from the state Pollution Control Board prior to issuance of no objection certificate. The right to access to such information accrues only after the Board has issued no objection certificate, the reason being that only the information which is in existence can be sought and not the one which has not yet come into existence.

The Supreme Court in a landmark judgment pronounced in the *ICAI v. Shaunak H. Satya* held that examining body is not liable to give to any citizen any information relating to question

papers, solutions (Model Answers) and instructions relating to particular examination before the date of such examination. But disclosure of question papers, model answers and instructions in regard to any particular examination will not harm competitive position of any third party once the examination is held.

The Apex Court in *Central Board of Secondary Education v. Aditya Bandopadhyay*, held that the examining bodies Universities, Examination Boards, etc. are neither security nor intelligence organisations and therefore the exemption under section 24 will not apply to them. Therefore they are bound to provide access to information and any applicant can either inspect the document/record, take-notes extracts or obtain certified copies thereof.

4.3.12. Personal Information

In the decision reported in *G.R.Deshpande v. Cen. Information Commr*, the Supreme Court observed that the performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally these are governed by the service rules. This information falls under the expression personal information. The disclosure of such information which has no relationship to any public activity or public interest would cause unwarranted invasion of privacy of that individual.

In the case of *Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala and Ors.*, the Supreme Court held that the co-operative societies concerned in these appeals will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence not subject to all 19(1) (c)-All citizens shall have the right to form associations or unions or co-operative societies. Article 19(1) (c), therefore, guarantees the freedom to form an association, unions and co-operative societies. Right to form a co-operative society is, therefore, raised to the level of a fundamental right, guaranteed under the Constitution of India. It was observed that the State should endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.

4.3.13. Judiciary and the Right to Information

Judiciary has undoubtedly enhanced the scope of right to information in India. Time and again it has supported the principles of transparency and accountability in all spheres of governance. However, in the recent times even the judiciary has been involved in a controversy relating to the issues of disclosure.

Judiciary is one of the three wings of the government along with the Legislature and Executive, and it is also accountable to the people like the other two. If any sort of immunity is resorted to the judiciary from Right to Information Act then it will be completely in contradiction of the principles of transparency and accountability in the governance. However, there may be certain genuine considerations like national security or individual privacy.

The Supreme Court in *KhanapuramGandaiah v. Administrative Officer*, held that the litigant cannot be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. The Court further illustrated that a Judge is not bound to explain latter on for what reasons he/she had come to such a conclusion. The order or judgement of a court cannot be questioned or challenged under the RTI Act.

The Supreme Court in its decision in the case of *Maraikkayar v. Haji KathijaBeevi Trust, Nagapattinam* observed that it is true that no court is liable to furnish information regarding the reason for its judgement under the Right to Information Act, 2005 but it is certainly expected to reveal and record the reasons for its decisions in the judgement or order.

Justifying the non-disclosure of information which does not form part of public record, the Supreme Court in *Indira v. Registrar General of the Supreme Court of India*, held that decision or information with regard to a Judge cannot be sought under the RTI Act. The court noted that free flow of the information is undoubtedly an essential element for the proper functioning of democracy, but there are several areas where information may not be furnished. This case involved of a sitting Judge of the Karnataka High Court in certain cases. The court held that the said report did not form part of public record and therefore, its non-disclosure was justified.

4.3.14. Disclosure of Information and Public Interest

It has been well settled that public interest in disclosure overshadows the harm to protected interest. The principle has been incorporated in Section 8 (2) of the RTI Act. The Supreme Court in *State of Karnataka v. Ranganatha Reddy* held that the purpose of a public body to run a public transport service is undoubtedly in public interest as it is for the benefit of the people. Thus, the information sought in public interest or for serving a public purpose shall not be exempt or deemed as exempted from disclosure.

4.4. SUMMARY

It may be summarised that disclosure of information is a rule while non disclosure is an exception to this rule. The object of the right to information is to ensure maximum transparency and openness in the system of governance. It has been universally accepted that complete openness in all matters of governance without any exception is neither feasible nor advisable. Therefore, a balanced approach to openness as envisaged by right to information law appears to be an appropriate step. The Supreme Court has played a vital role in enforcing this right and determining various significant issues related thereto.

4.5. SAQS

1. Short Answer Questions

Judiciary and Important Legislature effecting RTI

- a. Write short note on the right to information of the accused person with the help of leading cases.
- b. The right to information is an effective tool for bringing good governance. Discuss with the aid of decided cases.

2. Fill in the blanks

- a. The seeds of right to information were sowed by the Apex court in the case of
- b. Where the information sought pertains to private life of a person, it may not be disclosed being an exception of privacy underof the RTI Act.

3. True or False

- a. Right to information being integral part of the right of freedom of speech is subject to restrictions.
- b. All the citizens are entitled to know what their elected government is doing for them and what policies are made for their welfare.

4.6. REFERENCES

Right to Information Law in India by Dr. Vinay NPranjape, Central Law Agency, Allahabad, 2013.

Right to Information and Protection of Whistleblowers by Krishna Pal Malik, Allahabad Law Agency, Faridabad, 2016.

The Right to Information in India by Sudhir Naib, Oxford University Press, New Delhi, 2013.

4.7. SUGGESTED READINGS

Right to Information Act, 2005 by Dr. Abhe Singh Yadav, Central Law Publications, Allahabad, 2005.

Right to Information Law in India by Dr. N V Pranjape, Lexis Nexis, Gurgaon, 2014.

4.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

- a. It is a clear and settled principle that the right to receive and impart any information is included within the concept of right to freedom of speech and expression provided under Article 19(1) (a) of the Constitution of India. Discuss the case law on the above statement.

Judiciary and Important Legislature effecting RTI

b. There are several information which are exempted from disclosure. Discuss the approach of Supreme Court in relation to the same.

Answers

1. a. refer 4.3.9.

b. refer 4.3.5.

2. a. *State of Punjab v. Sodhi Sukhdev Singh*

b. Section 8 (1) (j)

3. a. true

b. true

TERMINAL QUESTIONS AND MODEL QUESTIONS

a. refer 4.4.1. and 4.4.3.

b. refer 4.3.11.

UNIT-5

HIGH COURT ON RIGHT TO INFORMATION

5.1. INTRODUCTION

5.2. OBJECTIVES

5.3. SUBJECT

5.3.1. Source of RTI Act

5.3.2. Public Authority and Right To Information

5.3.3. RTI Act applicable only to information available on record

5.3.4. Universities Covered under the RTI Act

5.3.5. RTI Act not applicable to Trusts and Colleges managed by trust

5.3.6. Request for photocopies of answer scripts

5.3.7. NGOs and RTI Act

5.3.8. Consumer's Right to Know

5.3.9. Right to Information is not absolute

5.3.10. Restriction on Disclosure of Information pertaining to Reasons for Judicial Decisions

5.3.11. Exemptions from disclosure of Information

5.3.12. Misuse of RTI law

5.4. SUMMARY

5.5. SAQS

5.6. REFERENCES

5.7. SUGGESTED READINGS

5.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

5.1. INTRODUCTION

Besides the Supreme Court's concern over the right to information, the High Courts of different states also focused on citizen's right to know through their judicial pronouncements. Following the verdicts of Supreme Court, several High Courts, in various cases, attempted to protect and enhanced the scope of Right to Information in India. As per the Constitutional provisions, the High Courts of different States have also examined and determined some core issues relating to right to information.

5.2. OBJECTIVES

The study of this chapter will make students understand

- The High Court's observations and views with regard to right to information.
- The High Court's interpretation of right to information.
- Judicial approach towards various allied aspects of RTI.

5.3 SUBJECT

5.3.1. Source of RTI Act

The High Court of Delhi in *Secretary-General Supreme Court of India v. Subhash Chandra Agarwal*, held that although the Right to Information Act, 2005 has been enforced in India, the source of information does not emanate from this Act, instead emerges from the constitutional guarantee under Article 19(1)(a) as reiterated by the Supreme Court in a number of decisions. The Court pointed out that Right to Information Act is not the repository of the right to information, its repository is the constitutional guarantee enshrined in Article 19(1)(a) of the Constitution.

5.3.2. Public Authority and Right to Information

The Kerala High Court in *M.P. Varghese v. Mahatma Gandhi University* held that the RTI Act, 2005 is applicable to "public authorities" as defined therein. The expression "public authorities" should not be given a restricted meaning by straight-jacketing it within the four corners of State as defined in Article 12 of the Constitution. It has to be given a much wider meaning than that of 'State' under Article 12.

Following the same trend in *Public Information Officer v. Manohar Parrikar*, The Bombay High Court has held that the posts of President and Governors are created by Constitution of India, hence they are public authorities under section 2(h) of Right to Information Act, 2005.

5.3.3. RTI Act applicable only to information available on record

Judiciary and Important Legislature effecting RTI

The High Court of Patna in *Shekhar Chandra Verma v. State Information Commissioner, Bihar* observed that Right to Information Act, 2005 contemplates furnishing of information which is available on records. If the information is not readily available, the public authority is not required to carry out an enquiry and collect or create information and then supply it to the applicant. In such a case, denial of the information is justified.

The High Court of Andhra Pradesh in *Khanapuram Gandhiah v. Administrative Officer*, held that a citizen can apply for any information under Section 6 of the RTI Act which is already in existence and accessible to the public authority. He is entitled to request for a copy of the information so held in records, orders or notifications etc. But no persons or litigant can be allowed to seek information as to the reasons which made the Judge to reach a particular conclusion. The order or judgement cannot be questioned or challenged under the RTI Act.

5.3.4. Universities Covered under the RTI Act

The High Court of Kerala in *M. P. Varghese v. Mahatma Gandhi University* held that the RTI Act, 2005 applicable to “public authorities” as defined in Section 2 (h) of the Act should not be given a restricted meaning. It has to be given a much wider meaning than that of ‘State’ under Article 12. It was further held that universities which are established and controlled by the Central or State Governments are public authorities under the RTI Act.

The High Court of Karnataka in *K. Ravi Kumar v. University of Bangalore* observed that the Karnataka Right to Information Act, 2000 makes it clear that the order of the day is to permit openness, transparency and accountability in the administration. The Act also applies to Bangalore University being subject to control of the State Government and therefore, it is bound to furnish the requisite information to the appellant in accordance with the State Right to Information Act.

5.3.5. RTI Act not applicable to Trusts and Colleges managed by trust

The High Court of Bombay in *Nagar Yuvak Shikshan Sansthan, Wanadogiri, Nagpur v. Maharashtra State Information Commissioner, Nagpur* held that the RTI Act is not applicable to public trust and colleges run by trusts, the reason being that a public trust is not run by the government either directly or indirectly .

5.3.6. Request for photocopies of answer scripts

The request for making answers copies available to examinees cannot be acceded to as a matter of right under RTI Act. The reason is obvious that no public interest is involved in it. General policy is not to provide photocopy of the answer-script to the examinee. The justification for this policy is that it would lead to unnecessary controversies and the examinee would always claim that he has been under assessed.

The High Court has upheld this view in *Mehraj Khan v. Madhyamik Siksha Parishad*. It was observed in this case that assessment of students by the examiners is done on comparative basis and therefore, it cannot be opened for individual self-assessment by the student himself.

In the case of *University of Calcutta v. Pritam Raj*, the Delhi High Court of Calcutta held that public authorities such as Universities, examination conducting boards etc. are not supposed to retain the answer scripts for more than a specified period as required under their relevant regulations. The Court observed that lakhs of examinees take the examination conducted by University/Board each year and if they were required to retain and preserve the answer scripts of examinees for unlimited period, it would cause immense hardship and palpable injustice to them. Therefore, they can destroy or dispose of the valued answer script at the expiry of the period for which they required to preserve them.

In another case, the petitioner appeared in departmental competitive examination. He sought disclosure of answer sheets of some of the constables who appeared in examination as co-candidates. The Chhattisgarh High Court held that disclosure of answer sheets of co-candidates would harm the competitive position of the third party interest. Therefore, there was no illegality in declining to disclose such information, i.e. supply of answer sheets of other constables as they are protected under Section 8 (1)(d) of the RTI Act.

In another case the Jharkhand High Court in *Jharkhand Public Service Commission, Ranchi v. State of Jharkhand*, held that the information regarding names of members of interview board cannot be furnished as it violates confidentiality

The Delhi High Court has held that file notings are exempted from disclosure of information in *Union of India v. R.S. Khan*. The Court further states that the making notes on file about the performance or conduct of another officer by the government servant while performing official functions cannot be said to be information given to the Government pursuant to a “fiduciary relationship” within the meaning of section 8(1)(e) of RTI Act, 2005. Section 8(1)(e) of the Act is a ground to deny information to a third party on the ground that information sought concerns a government servant, and is available with the government pursuant to a fiduciary relationship.

The Karnataka High Court in *Basawanappa v. Karnataka State Information Commission* has held that in case of appeal against order passed by State Information Commission then such appeal does not lie under section 19 of the Right to Information Act, 2005.

Similarly, in case of third party information the Delhi High Court in *Arvind Kejriwal v. Central Information Officer* has held that the procedure prescribed under section 11 of Right to Information Act, 2005 is to be followed where the information is confidential.

Following the trend the Madras High Court in *Superintendent of Police, Central Range Office of the Directorate of Vigilance and Anti-corruption, Chennai v. R. Karthikeyan* has held that the State Government can notify exempting intelligence and security organisation but it cannot

notify information relating to allegations of corruption and human rights violation even in case of intelligence and security organisation.

5.3.7. NGOs and RTI Act

The Madras High Court in *Karanthai Tamil Sangam v. R. Sivaprakasham*, held that the Non-government Organisations which receive allocations or the provision of funds are to be treated as public authorities.

5.3.8. Consumer's Right to Know

The High Court of Delhi in *Ozair Hussain v. Union of India*, explained the expanding domain of information that should be made available to consumers under their 'Right to Know'. In this case a PIL was filed by an animal rights activist seeking a direction to the Union of India to make information about the ingredients of food, cosmetics and drugs etc. which are being sold to the consumers. The petitioner raised objection to the use of animals in whole or in part or their derivatives in food, cosmetics, drugs etc. and sought direction to the manufacturers and packers of these articles for complete and full disclosure of ingredients of their products which were being sold to the consumers. It was pointed out in the petition that more than 60 percent of people of this country are vegetarians and over 50 percent of them are illiterate and large number of them could not read or write English. Therefore, disclosure of the products, whether vegetarian or non-vegetarian, should be in local language so that illiterate consumers could make an informed choice before selecting the product for consumption. The petitioner emphasised that Article 19(1)(a), Article 21 and Article 25 of the Constitution as also the Preamble to the Constitution mandates disclosure of information.

The Division Bench of the Delhi High Court held that there is a constitutionally guaranteed right of consumers to the full disclosure of the ingredients of food articles, cosmetics, drugs etc. Thus this petition is allowed with necessary directions to the Union Government to initiate necessary steps to disclose full information about the contents, ingredients, price etc. on the packets of the food articles, drugs, cosmetics etc. and ensure their compliance.

5.3.9. Right to Information is not absolute

In tune with Supreme Court decisions the various High courts also held in many cases that the right to information is not an absolute right. The High Court of Delhi held in the *Union of India v. Anita Singh* that personal information relating to third party cannot be disclosed unless the information relates to any public activity of a third party who has provided the said information or it is in public interest to disclose the information desired by the applicant. In the instant case, the respondent asked for the information from the PIO of the Passport Office, Dehradun regarding date of birth and residential address of the passport holder named Ajeet Singh and photocopy of it. The PIO refused to give the said information claiming it was exempt from disclosure under Section 8 (1)(j) of the Right to Information Act. Aggrieved by this refusal, the

respondent approached the Central Information Commission (CIC). The Commission held that Section 8 (1)(j) cannot be applied when the information concerns institution, organisation or corporates. The State routinely obtains information from citizens, like the one in question, and this information is in relationship to a public activity, therefore it will not amount to intrusion of privacy. However, in appeal, the Delhi High Court set aside the order of CIC and held that the information sought would violate the personal right of privacy and therefore, it was exempt under Section 8 (1)(j) and the passport authorities would be justified in not disclosing information to the respondent.

5.3.10. Restriction on Disclosure of Information pertaining to Reasons for Judicial Decisions

Under the RTI Act, an applicant is entitled to get a copy of the opinions, advices, circulars, orders etc., but he cannot ask for any information as to why such opinions, advices, orders etc. have been passed, especially in matters pertaining to judicial decisions.

In *Kasim Maraikkayar v. Haji KathijaBeevi Trust, Nagapattinam*, it has been reiterated by the Madras High Court that the Courts are not liable to furnish information like public bodies, but they are certainly expected to reveal the reasons in the judgement or order which made the court to reach a particular conclusion or decision. It was further observed that giving reasons for the decision or order would serve two main purposes, namely, it would give satisfaction to both parties, and at the same time enable the appellate court to appreciate the matter and reach a conclusion whether the decision warrants any interference or not.

5.3.11. Exemptions from disclosure of Information

In *General Manager Finance Air India Ltd. v. Virender Singh*, the petitioner asked Air India to disclose names of these persons to whom complementary 1200 tickets were issued in the year 2006. Air India claimed that the information is protected under section 8(1)(j) of the Act. The Delhi High Court held that Section 8 of the Act is an exception to otherwise regime of transparency and disclosure brought by the Act. Exemption could not be allowed merely on ground that it was raised. It was for public authority to show and prove that the information falls in one of exempted categories. Information sought by any person shall not be denied unless it is shown that such information is exempted from disclosure. The Air India was required to disclose the information as it failed to prove that the information is protected from disclosure.

The Delhi High Court in *Vijaya Prakash v. Union Of India*, held that right to access public information is an accountability measure for the citizens. By exercising this right the people may know how the Government is conducting itself and what is it doing for its people whom it governs. It stated that, in case of conflict between right to access to information under RTI Act, 2005 and right to privacy implicitly available to the citizens of India under Article 21 of the Constitution, the transparency value of the former has to be reconciled with the legal

interests protected by fundamental right to privacy. It is for the Court to decide which one of the two dominates or outweighs the other.

In *L. K. Koolwal v. State of Rajasthan*, the appellant Koolwal approached the High Court of Rajasthan in exercise of right vested on him under Article 51-A of the Constitution. Though it is said to be a duty, yet the court should give directions against the respondent to implement the law and perform its obligatory duties cast on the state. The appellant contended that maintenance of health, preservation of sanitation and environment falls within the purview of Article 21 of the Constitution. In absence of any check or control in time over the abovesaid the lives of the citizens may be adversely affected. It may also amount to slow poisoning and reducing the life of the people. It was held that there exists right to know about the steps taken by the state to preserve health and to prevent environment pollution. It was also held that there was nothing in the demand of information which could be denied under Article 19 (2) on the ground of reasonable restrictions on freedom of speech.

The Madras High Court in the case of *V Madhar v. Tamil Nadu Information Commission*, held that the asset details of government servants filed before government though in sealed cover cannot be said to be information and could not be accessed by government.

The Jharkhand High Court in *Jharkhand Public Service Commission, Ranchi v. State of Jharkhand*, held that the information regarding names of members of interview board cannot be furnished as it violates confidentiality.

In one of the important cases, the Delhi High Court has held that file notings are exempted from disclosure of information in *Union of India v. R.S. Khan*, The Court states that the government servant performing official functions and making notes on file about the performance or conduct of another officer, such noting cannot be said to be given to the Government pursuant to a “fiduciary relationship”, with the government within the meaning of section 8(1)(e) of RTI Act, 2005. The Section 8(1)(e), is, at best, a ground to deny information to a third party on the ground that information sought concerns a government servant, which information is available with the government pursuant to a fiduciary relationship, that such person, has with the government as an employee. It will be no ground for Government of India to deny an employee against whom the disciplinary proceedings are held to withhold the information available in the government files about such employee on ground that such information has been given to it by some other government official who made the noting in a fiduciary relationship.

5.3.12. Misuse of RTI law

It has been experienced that the RTI law is being misused by casual or habitual information seekers. It is misused for two obvious reasons. Firstly non applicability of locus-standi rule, that means anybody can seek information without any specific eligibility condition and

secondly, non-requirement of giving reasons for seeking information. This leaves sufficient scope for non-serious information seekers to misuse it for their aggrandisement or personal interest.

The High Court of Andhra Pradesh expressed its concerns for misuse of RTI law in *Diwakar S. Natrajan v. State Information Commissioner*. The court observed that “indiscriminate efforts to obtain information just for the sake of it, without there being any genuine and useful purpose to serve, would only put enormous pressure on the limited human resources that are available with the public authority. Diversion of such resource for this may become harassment for the concerned public agencies. Therefore, much needs to be done in this direction to impart a sense of reasonability on those who want to derive benefit under RTI Act, to be more realistic and practical in approach”.

5.4. SUMMARY

The focus that High Courts of different states gave on citizen’s right to know through their judicial pronouncements can be realised through various judgements passed by them. Following the verdicts of Supreme Court, several High Courts, in various cases, attempted to protect and enhanced the scope of Right to Information in India.

5.5. SAQS

1. Short Answer Questions

- a. RTI Act is applicable only to information available on record. Discuss it with the help of leading judgements of High Courts.
- b. What do you mean by “Public Authority”? Discuss with the aid of decided cases of High Courts.

2. Fill in the blanks

- a. A citizen can apply for any information underof the RTI Act, 2005 which is already in existence and accessible to the public authority
- b. The procedure prescribed underof Right to Information Act, 2005 is to be followed where the information is confidential

3. True or False

- c. The Non- government Organisations which receive allocations or the provision of funds are to be treated as public authorities.
- d. A Central University is not a public authority as per the Right to Information Act.

4.6. REFERENCES

Right to Information Law in India by Dr. Vinay N Pranjape, Central Law Agency, Allahabad, 2013.

Right to Information and Protection of Whistleblowers by Krishna Pal Malik, Allahabad Law Agency, Faridabad, 2016.

The Right to Information in India by Sudhir Naib, Oxford University Press, New Delhi, 2013.

4.7. SUGGESTED READINGS

Right to Information Act, 2005 by Dr. Abhe Singh Yadav, Central Law Publications, Allahabad, 2005.

Right to Information Law in India by Dr. N V Pranjape, Lexis Nexis, Gurgaon, 2014.

4.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

a. It is a clear and settled principle that the right to receive and impart any information is included within the concept of right to freedom of speech and expression provided under Article 19(1) (a) of the Constitution of India. Discuss the various decisions of the High Courts on the above statement.

b. There are several information which are exempted from disclosure. Discuss the approach of High Court in relation to the same.

Answers

1. a. refer 5.3.3.

b. refer 5.3.2.

2. a. Section 6

b. Section 11

3. a. true

b. false

TERMINAL QUESTIONS AND MODEL QUESTIONS

c. refer 5.3.1.

d. refer 5.3.11.

UNIT-6

OTHER IMPORTANT PRONOUNCEMENTS

6.1. INTRODUCTION

6.2. OBJECTIVES

6.3. SUBJECT

6.3.1. Meaning of Public Authority

6.3.2. Transparency and Accountability in Functioning of Public Authority

6.3.3. Information for the purpose of the RTI Act

6.3.3.1. Advice or Opinions

6.3.3.2. Grievances or claims

6.3.3.3. Vexatious and Frivolous Queries

6.3.3.4. Immaterial Information

6.3.4. Persons entitled to seek information under RTI

6.3.5. Direction of Supply of information

6.3.6. Delay in Providing Information

6.3.7. Denial to Respond to the RTI Application

6.3.8. Non-Disclosure of Information

6.3.9. NGOs under RTI Act

6.3.10. Imposition of Penalty by CIC

6.4. SUMMARY

6.5. SAQS

6.6. REFERENCES

6.7. SUGGESTED READINGS

6.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

6.1. INTRODUCTION

The Central Information Commission and State Information Commissions have been constituted by the Central Government and state Government under Section 12 and Section 15 of the RTI Act respectively. Apart from the judicial decisions of the Supreme Court and different high courts that came from time to time, the Chief Information Commission has also contributed significantly to the development of the right to information law in India through its decisions and directions. It has examined various issues relating to right to information.

6.2. OBJECTIVES

The study of this chapter will make students understand

- The CIC and SIC observations and views with regard to right to information.
- The commission's interpretation of various related to right to information.
- Commissions approach towards various allied aspects of RTI.

6.3. SUBJECT

6.3.1. Meaning of 'Public Authority'

The Central Information Commission in *Mrs. Laxmi v. Mrs. Indira Rani Singh*, PIO and Dy. Director, explained the meaning of Public Authority as follows:

'Public Authority' means an authority or body or institution of self-government established and constituted by or under the Constitution or any other law made by Parliament, or State Legislature, by notification issued or order made by the appropriate government and includes anybody owned, controlled or substantially financed, directly or indirectly by funds owned, controlled or substantially financed, directed or indirectly by funds provided by the appropriate Government. In this case the CIC held that a private unaided school not being a public authority, the provisions of RTI Act, 2005 are not applicable to it.

6.3.2. Transparency and Accountability in Functioning of Public Authority

The main objective of RTI Act is to ensure transparency and accountability in the working of the government and functioning of public authorities. The CIC in the case of *Smt. Kamallesh Lal v. NTPC Ltd.* observed that the denial of result of the inquiry and communicating the same to the complainant under Section 8 (1)(j) would defeat the very purpose of the RTI Act which is meant to "promote transparency and accountability in functioning of the public authorities". Denial of the result is therefore, not permissible under the Act.

Similarly in the case of *Smt. Durdana Ali v. BHEL* details of the outstanding dues from outside agencies or individuals who were allotted staff quarters by BHEL were denied by the BHEL on the ground of exemption under Section 8 (1)(j) of the RTI Act. It was held violative of the provisions of the Act and such denial was not justified.

In an important decision of the CIC in the case of *Ms. Anumeha C/o. Association for Democratic Reforms, Delhi v. Income-tax Deptt*, the appellant sought to know the political parties named by her in the RTI application have submitted their Income-Tax Returns for years 2002-03 to 2006-07 and if so, PAN Nos. allotted to these parties also sought copies of Income-tax returns filed by them. The CIC afforded hearing to all the political parties mentioned in the RTI application, who vehemently opposed the disclosure. The CIC held that political parties are the unique institutions of modern democracies and they are civil society institutions are therefore, non-governmental. Despite being non-governmental they do directly or indirectly wield influence on governmental power. It must be promoted in public interest. In the instant case, this promotion of public interest is being sought through disclosure of the Income-tax Returns of the political parties. The CIC, therefore directed the public authority that it shall provide to the appellant Income Tax returns of the political parties filed with Income tax department and also the period mentioned in the RTI application.

6.3.3. Information for the purpose of the RTI Act

The term 'information' as defined under the Act does not include queries asked to elicit answers to questions such as why, what, when or whether. The Central Information Commission (CIC) therefore, held in *Dr. D. V. Rao v. Deptt. of Legal Affairs, New Delhi*, that the request as to why the recruitment rules were not amended, is not covered within the definition of the term information and as such the public authority was under no obligation to answer the queries.

6.3.3.1. Advice or Opinions

Advice or Opinions are not information for the purpose of RTI Act. The CIC in the case of *Aakash Agarwal v. DRT-I, New Delhi*, held that the contention of the appellant that the words advices and opinions of the public authority in respect of interpretation of any law or event etc. is included in the definition of the information and therefore, he was entitled to same, is misconceived and untenable.

6.3.3.2. Grievances or claims

The *Dharampal Saini v. Central Water Commission, New Delhi*, the appellant's request for information related to his service matter such as cadre to which he belongs, his right to promotion as a staff of the Central Water Commission etc. The CIC held that what the appellant was seeking was not the information but actually he wanted the commission to direct the public authority to do certain things as prayed for, which was beyond the ambit of RTI Act. Hence appeal was not tenable.

6.3.3.3. Vexatious and Frivolous Queries

Vexatious and Frivolous Queries are not information for the purpose of RTI Act. The CIC in the case of *N. B. Prasad v. SEBI* found that there was very little to treat the request for information in three page long petition containing as many as nineteen queries which were actually sought by way of explanations, opinions etc. are unrelated to any specific item of information. Held that respondent public authority was not justified in not responding to such frivolous and vexatious queries and appeal was dismissed.

6.3.3.4. Immaterial Information

In *Subhash Chandra Agarwal v. Deptt of Justice, Law Ministry*, the appellant asked in his request for information that who is the appointing and disciplinary authority for Judges and Chief Justices of High Courts and Supreme Court. The respondent were justified in refusing to provide with interpretation of constitutional law to the appellant as the information asked for was neither material as stipulated in Section 2 (f) nor could it be construed to have been held by the respondents in section 2(j) of the RTI Act. Therefore, respondents were under no obligation to provide answer to appellant's queries.

6.3.4. Persons entitled to seek information under RTI Act

Only a living person who is an Indian citizen is entitled to seek information under the RTI Act. Section 3 of the RTI Act provides that all citizens have the statutory right seek information. It therefore follows that association of persons, firms, group of persons, companies etc. are not entitled to claim right to information under the RTI Act.

In *M/s Arya Steel (P) Ltd. v. Central Excise and Service Tax Deptt*, the RTI application and subsequent appeals were initiated by the appellant Mr. Sunil Gupta, not in his personal capacity but in the name of his firm, namely M/s Arya Steel (P) Ltd and the appellant stated that he was not aware of the rules and regulations of the Commission and thus requested to be excused and permitted to modify his application to make himself an applicant. The Commission allowed the appellant to modify his application and agreed to proceed with it as an application filed by the appellant in his personal name and not in the name of his firm.

6.3.5. Direction of Supply of information

The case of *Laxmi Chauhan v. Ministry Of Environment and Forests (MoEF)* relates to direction issued by CIC to the respondent to supply information sought by appellant without payment of any fees. The appellant Laxmi Chauhan of Korba, Chhattisgarh sent an appeal to CIC along with fee of Rupees ten by postal order. The application was returned on the ground that it was submitted without the necessary fee. The appellant moved an appeal directly to CIC without taking recourse to First appellate authority. The CIC remanded the appeal to the First appellate authority with the noting that the appellant had directly approached the CIC under Section 18 without showing any ground of malafide on the part of the first appellate authority which was not proper. However, now the CPIO will dispose the appeal within 15 working days

from the date of this decision to CIC and if the information is not provided within the time frame, the appellant will be free to come before CIC in second appeal under Section 19(3) of the RTI Act, 2005.

In the case of *Amit Ghosh v. Department of Pension and Pensioner's Welfare, New Delhi*, Amit Ghosh moved a complaint to CIC under RTI Act, 2005 stating that his request submitted to Central Public Information Officer, Department of Pension and Pensioner's Welfare, Delhi has not been responded. He had sought certain specific queries on Family Pension. He further submitted that no order has been passed by the First Appellate Authority of the department on his appeal made under Section 19(1).

The CIC admitted the appeal filed by Amit Ghosh under Section 18 (1)(b) of the RTI Act, 2005 and served notices to an CPIO and First Appellate Authority for furnishing its comments. The CPIO had regretted the delay and requested its condonation by CIC.

6.3.7. Denial to Respond to the RTI Application

There have been number of cases where the CIC is required to decide the complaints or appeals alleging refusal or denial of information to the applicants.

In the case of *Balwant Singh v. Northern Railways, Ferozpur*, the applicant sought information and documents relating to his promotion for the post of pharmacist. He was denied the same on the ground that the matter was sub-judice before the Central Administrative Tribunal. On appeal, the CIC held that the PIO was completely mistaken in refusing to give information on the ground that the matter was sub-judice. This refusal, amounted to wilful denial of information. Thus CIC awarded a compensation of Rs. 2000 to be paid by the PIO personally to the appellant for causing mental harassment.

In Paramveer Singh v. Punjab University it was held that record management should be improved by all public authorities. It is also the responsibility of every public authority to take all measures in pursuance of Section 4(1)(a), to implement efficient record management systems in their offices so that the requests for information can be dealt promptly and accurately.

Following the trend the Central Information Commission in the case of *Shyam Yadav v. Department of Personnel Training* has held that property statements filed by civil servants can be disclosed after taking the views of concerned officials as per the provisions of the RTI Act and the information is not confidential.

In a similar fashion the Central Information Commission in the case of *Ram Bhaj v. Delhi government*, has directed the Delhi government to inform the common man about the requisite timeframe to redress their grievances.

In *Subhash Chander Agrawal v. Secretariat of President*, it was argued on behalf of the appellant that the relationship between a judge and the Chief Justice cannot be construed to be fiduciary as claimed by the CPIO, Department of Justice. The Counsel for the appellant relied on the ruling in *S.P. Gupta v Union of India and others*. The CIC did not comply with this contention and said that the disclosure part of the decision was not overruled at all. The CIC held that the case was overruled in so far as it was in conflict with the view relating to the privacy of the opinion of the Chief Justice of India in matters of appointment, transfer and the justiciability of these matters as well as in relation to judge strength. However it did not find that the decision in the Gupta case on the question of disclosure was overruled. But still as the disclosure of the information sought pertains to third parties, the CIC directed the PIO to process the disclosure after duly issuing notice to third parties concerned. It was further directed that in case of a valid objection to disclosure in any case, the information sought might be supplied to the exclusion of the objectionable portion, as prescribed under section 10 of the RTI Act.

Following the trend the Central Information Commission in *D. K. Mishra v. Ministry of Law and Department of Justice*, has directed the CPIO to disclose information pertaining to appointment process.

The Central Information Commission in *Subhash Chandra Agrawal v. Department of Justice*, held certain documents as protected and immune from disclosure. These were the documents consisting of correspondence exchanged between the Law Ministry or other high level of functionaries of the central government, the Chief Justice of the state and the CJI. This includes the documents in regard to the appointment or non-appointment of a High Court Judge, a Supreme Court Judge or the transfer of a High Court Judge. It also comprises the notes made by these constitutional functionaries in that behalf.

The Central Information Commission (CIC) in *Ajay Kumar Goel v. MCD*, for the first time, imposed a penalty of Rs. 25,000 on a PIO who has failed to appear before the commission on due date and time despite a telephonic reminder. Since, the burden of proving that he acted reasonably and diligently is on the PIO under Provision II to Section 20(1), it is assumed that he has no reasonable cause to show why penalty should not be imposed. Under the aforementioned section of the Act, penalty shall be imposed on any of the following grounds. If the PIO has refused to receive an application or do not furnish the information within the time frame specified therein or malafidely denied the request for information or knowingly gives an incorrect information.

In *P K Dalmia of Noida v. Supreme Court of India*, the applicant sought information from the Public Information Officer of the Supreme Court on what action had been taken on three of his complaints made in 2007 and 2008 against the judges of Allahabad High Court on some matter

of embezzlement. The response of the PIO was negative as information relating to complaints against High Court judges were not part of the routine SC registry.

6.3.8. Non-Disclosure of Information

Dr. Abkebaram v. Deputy Commr. K.V. S. Regional Officer, the complaint was related to non-disclosure of information by the PIO of the Kendriya Vidyalaya Sangathan regarding certain queries. The CIC found that the information sought under query was incomplete and directed to provide complete information.

In the case of *Anuradha Redkar v. New India Assurance Co Ltd.*, the information was not furnished to the petitioner within the stipulated period of 30 days, therefore, he moved to a complaint against deemed refusal of RTI application before the CIC. The CIC issued notices to the respondents for his failure to comply with RTI application and sought a reply from him within two weeks. The CIC also directed the CPIO to provide the petitioner, point wise reply to her RTI application.

6.3.9. NGOs under RTI Act

The NGOs which are substantially financed by the Government are covered under the RTI Act. In the case of *Ms. Suman Bakshi, New Delhi v. Directorate of Health Services, Govt of NCT of Delhi*, the CIC held that there may be several cases where NGO which is being substantially financed by the Government has not set a mechanism and therefore, recommended that Ministries and Departments of the Central/State Governments should make an assessment as to whether NGOs who are being financed by the Government have set up a mechanism to provide information to the citizens who wish to obtain information under RTI Act. If such a mechanism has not been set up by any NGO, no funds should be released to them until the time such mechanism is set up. It was further held that a copy of this order should be sent to all Ministries and Departments of the Government for taking necessary action in this regard.

6.3.10. Imposition of Penalty by CIC

Under Section 20 (1) of the RTI Act, 2005 The CIC may penalise the defaulting PIO or CPIO, as the case may be, if it finds that there has been a sufficient delay in providing the requested information to the applicant. There are several cases when it is brought to the notice of the CIC that there has been inordinate delay in providing the information to the applicant without sufficient or reasonable cause. In such cases, the CIC has the power of penalising the concerned PIO or CPIO, as the case may be.

In *Sarabjit Singh v. Ministry of Home Affairs*, The complainant Sarabjit Singh of Kotkapura, Punjab complained to the CIC that his request for information under Section 6 (1) of the RTI Act, 2005, seeking copy of a complaint, enquiry Crime (Women's Cell) Nanakpura, New Delhi had not been responded even though the application was duly submitted alongwith the requisite

fees. The CIC directed the CPIO to provide the information sought within ten working days from the date of receipt of the order, but CPIO did not comply with the IC's order. Thereupon the CPIO was directed by CIC to show cause as to why a penalty of Rs. 250 per day from the date when the information became due to the date when the information is actually supplied should not be imposed on him under Section 20 (1) of the RTI Act, 2005. The CPIO was asked to submit his written submission in this regard to the Central Information Commission without any delay.

Similarly, in the case of *Neelam Kshetri v. Ministry of Defence (MoD)*, the appellant Neelam Kshetri of Dehradun complained that her request for information under RTI Act, 2005 regarding appointment rules in the Aava Vocational Training Centre submitted to CPIO, a commanding Officer, had not been responded, despite submission of application by her alongwith the requisite fees.

The CIC decided to entertain appellant's application as complaint petition under Section 18 of the RTI Act, 2005 and thereby directed the CPIO and commanding Officer to provide the information sought by the applicant within ten days from the date of receipt of the CIC's order.

In the case of *Dr. Anand Akhila v. Council of Scientific and Industrial Search (CSIR)*, the information requested by the applicant was refused by the CPIO stating that the same was exempted under Section 8 (1) of the Act and hence could not be released and he could move the first appellate authority, if he so desires. The appellate authority on receipt of the said copy *suo moto* write to the applicant Dr. Anand Akhila, that the information requested by him cannot be relied even if he actually approaches the first appellate authority in appeal.

The CIC seriously objected to this *suo moto* action of the appellate authority of CSIR and recommended disciplinary action against appellate official by extending the meaning of Section 22 of the RTI Act, 2005. The CIC held that though appellate authority was not covered under the Act, but in the instant case, the appellate authority clearly failed to uphold the Act in public interest and therefore, the Public Authority must take disciplinary action against the Public Authority under the RTI Rules.

6.4. SUMMARY

The Information Commissions have been conferred powers to receive and inquire into a complaint from any aggrieved person under the RTI Act. The Central and State Information Commission have been handling various issues in the complaints made to it by aggrieved persons relating to right to information. It is well understood that providing right to information to the citizens will not bring transparency and accountability in the system by itself. It needs to be effectively and efficiently provided to the citizens for ensuring true democracy. The commissions are handling this task with great concern and full potential.

6.5. SAQS

1. Short Answer Questions

- a. Grievance or claims are not information for the purpose of RTI Act. Discuss with help of decisions of the commissions.
- b. Who are the persons entitled to seek information under RTI Act? Discuss with the aid of decided cases.

2. Fill in the blanks

- a. Under Sectionof the RTI Act, 2005 The CIC may penalise the defaulting PIO or CPIO.
- b. Sectionof the RTI Act provides that all citizens have the statutory right to seek information.

3. True or False

- a. Association of persons, firms, group of persons, companies etc. are not entitled to claim right to information under the RTI Act.
- b. The NGOs which are substantially financed by the Government are not public authorities under the RTI Act.

6.6. REFERENCES

Right to Information Law in India by Dr.Vinay N Pranjape, Central Law Agency, Allahabad, 2013.

Right to Information and Protection of Whistleblowers by Krishna Pal Malik, Allahabad Law Agency, Faridabad, 2016.

The Right to Information in India by Sudhir Naib, Oxford University Press, New Delhi, 2013.

6.7. SUGGESTED READINGS

Right to Information Act, 2005 by Dr. Abhe Singh Yadav, Central Law Publications, Allahabad, 2005.

Right to Information Law in India by Dr. N V Pranjape, Lexis Nexis, Gurgaon, 2014.

6.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

UNIT-7

THREATS TO THE LIFE OF RTI ACTIVISTS

7.1 INTRODUCTION

7.2 OBJECTIVES OF THE RIGHT TO INFORMATION ACT

7.3 SUBJECT

7.3.1 THREATS TO THE LIFE OF RTI ACTIVISTS

7.3.2 RTI AND UN

7.3.3 RTI AND INDIA

7.3.4 LACK OF PROTECTION

7.3.5 JUDICIARY ON WHISTLEBLOWER'S PROTECTION

7.3.6 WHISTLEBLOWERS PROTECTION ACT

7.4 SUMMARY

7.5 GLOSSARY

7.6 SAQS

7.7 REFERENCES

7.8 SUGGESTED READINGS

7.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

7. INTRODUCTION:

Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions It provides a– RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments

7.1 OBJECTIVES OF THE RIGHT TO INFORMATION ACT

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

7.3 SUBJECT

7.3.1 THREATS TO THE LIFE OF RTI ACTIVISTS

A Right to Information (RTI) activist, Nanjibhai Sondarva (35) was clubbed to death on March 9 in Rajkot district of Gujrat by six unidentified men.¹⁵⁵

The killing comes three months after National Human Rights Commission had directed the state government to ensure protection of human rights and RTI activists in the state.

Meanwhile, Sondarva's father, Meghabhai has claimed that the attack occurred soon after his son filed an RTI application demanding transparency in funds spent on the construction of a road in their village.

"This was not the first time my son had been attacked. He and other members of my family were allegedly assaulted one and a half years ago, by the village Sarpanch who was furious at Sandorva for using RTI to expose financial irregularities in the developmental works undertaken in the village," Meghabhai said.

Meghabhai has now named the Sarpanch in the killing of his son.

¹⁵⁵ <http://www.risingkashmir.com/news/rti-activist-murdered-in-gujrat>.

Judiciary and Important Legislature effecting RTI

With the killing of Sandorva, the number of citizens and activists who used RTI to question the government in Gujrat has risen to 11.

There have been least 16 cases of assault on other RTI activists in Gujarat reported since October, 2005 when the RTI Act was operationalised.

With this latest incident, the total number of victims, allegedly murdered for seeking information under RTI, across the country has gone up to 67.

Recently RTI activist Bhupendra Vira, who used the Right to Information (RTI) Act to unearth information about illegal construction, was shot after the information led the police to file charges against a politician and his son. Since the Act came into force in 2005, at least 51 individuals, including 17 women, have been murdered and another five persons allegedly driven to suicide by harassment in assaults linked to seeking information under the RTI Act. This is in addition to the hundreds of cases where applicants and their families have been assaulted, harassed and threatened.

Maharashtra, with 10 such murders, and Gujarat, with eight, lead the states where such incidents have occurred, but there has been violence against RTI activists all over India.

7.3.2 RTI and UN

The right to information is considered a basic human right in international law. The UN Commission on Human Rights says: "Access to information is basic to the democratic way of life. The tendency to withhold information from people at large is to be strongly checked."

7.3.3 RTI and India

The RTI Act was enacted in 2005. Over four million RTI applications are filed every year. Despite under-staffed information commissions, and delays, the RTI Act has empowered citizens to hold officials and politicians accountable. It has exposed many scams such as the Adarsh Housing scam in Mumbai. The information has often exposed the nexus among politicians, bureaucrats and businessmen. India does not have a specific privacy law, or a data protection Act.

7.3.4 LACK OF PROTECTION

The murders and assaults make it evident that people seeking information under the RTI Act are not adequately protected by the government even though several remedies have been suggested. These range from keeping the names and personal details of applicants confidential to putting the requested information directly in the public domain, assuming, of course, that the request is considered fair. There is also merit in putting information directly in the public domain as it obviates duplication of applications, at the same time protecting applicants who need not expose themselves as targets while publicising the information. Direct publication

would also prevent the misuse of the RTI Act as a tool for blackmail. As things stand, the RTI format requires the applicant to provide his complete name and postal address. There is legal ambiguity about the need to keep personal details confidential. In practice, the RTI request is often passed around among relevant government departments with all the applicants' details becoming public. In the analogous UK's Freedom of Information Act, applicants' names are always blanked out, even in communications between government departments and in public uploads of responses to queries.

7.3.5 JUDICIARY ON WHISTLEBLOWER'S PROTECTION

The Calcutta High Court has suggested that RTI applicants need not disclose any personal details, other than, say, a post office box number, or an anonymous email id, as a point of contact. The court said: "It would be the solemn duty of the authorities to hide such information so that people at large would not know of the applicant's personal details." However, this suggestion is not binding in law.

7.3.6 WHISTLEBLOWERS PROTECTION ACT

Whistle Blowers Protection Act, 2011 is an Act of the Parliament of India which provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices. Whistleblowers Protection Act pending in the Rajya Sabha has many amendments that prohibit the reporting of corruption-related disclosures under 10 different categories. This would dilute the RTI Act in scope. Moreover, the Whistleblowers Act does not provide explicit privacy and protection to RTI applicants. This is one of many areas where the need for a specific privacy law and data protection law is acute. The RTI Act was a huge improvement in transparency of governance. But instead of following through to strengthen the RTI Act and protect applicants, successive governments have tried to dilute its provisions.

7.4 SUMMARY

Since it came into effect in 2005, citizens have used it with varying degrees of success in different parts of the country. But the struggle for transparency and openness has not been without a price. Many activists were killed after exposing cases of corruption in public utilities, mining and food distribution.

"Mainly those persons whose corrupt deeds were exposed, mainly private contractors, they are attacking the RTI activists," says Subash Chandra Agarwal, an RTI community activist based in Delhi. "The mafia group and contractors are taking advantage of corruption in authority."

7.5 GLOSSARY

PIOs: Public Information Officers

7.6 SAQS

1. SAQs

- a) What NHRC stands for?
- b) What are the objectives of RTI?

2. Fill in the blanks:

- a) The RTI Act was a huge.....in transparency of governance.
- b) The right to information is considered a basic in international law

3. True & False:

- a) RTI came into effect in 2005.
- b) Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government.

7.7 REFERENCES

1. <http://www.iasparliament.com/blogs/pdf/protection-for-rti-activists>
2. https://en.wikipedia.org/wiki/Attacks_on_RTI_activists_in_India
3. <https://www.dw.com/en/indias-rti-activism-threats/a-6488531>
4. <http://www.rtifoundationofindia.com/latest-bytes/threat-life-rti-activist612#.XEIfDWmq3IU>
5. <https://rti.gov.in/rtiact.asp>

7.8 SUGGESTED READINGS

1. Dr. Neelam Kant, 2014, published by Orient Publishing Company.
2. Right to Information Act, 2005
3. Whistle Blowers Protection Act, 2011
4. <http://www.iasparliament.com/blogs/pdf/protection-for-rti-activists>
5. <https://rti.gov.in/rtiact.asp>

7.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. What are the objectives behind enacting Whistle Blowers Protection Act, 2011?
2. Write a detailed note on threats to the life of RTI activists?

Answers

SAQS

1. (a) Refer 7.2 , (b)Refer 7.1
2. (a) improvement (b) human right.
3. (a) True, (b)True

Terminal Questions and Answers

- (a) Refer 7.7 (b) Refer 7.2

UNIT-8

SUPREME COURT GUIDELINES

8.1 INTRODUCTION

8.2 OBJECTIVES OF THE RIGHT TO INFORMATION ACT

8.3 SUBJECT:

8.4 SUMMARY:

8.5 GLOSSORY:

8.6 SAQS

8.7 REFERENCES

8.8 SUGGESTED READINGS

8.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

8.1 INTRODUCTION:

The Supreme Court of India consistently held from 1975 to 2005 that RTI is a fundamental right of citizens. The nation recognizes its great contribution to the framing of the Right to Information Act.¹⁵⁶ Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions It provides a– RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments.

8.2 OBJECTIVES OF THE RIGHT TO INFORMATION ACT

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

8.3 SUBJECT:

On arrest of activists hon'ble Supreme Court, hearing the case led the three-judge bench, headed by the CJI to make profound observations like, 'dissent is the safety valve of democracy' and that the 'liberty of individuals cannot be curtailed at the altar of conjectures'. If the court takes these observations to their logical conclusion, and quashes the illegal arrests of the five activists in the Bhima Koregan case, it will be a huge victory for democracy and dissent. On September 21, the bench reserved its verdict on the plea of five eminent citizens for an independent probe, monitored by the court, into the allegations against the activists.¹⁵⁷

UPDATE: On Friday, the Supreme Court refused to constitute an SIT into the arrests of the activists and ordered four more weeks of house arrest, during which the activists may approach a trial court for bail.

In recent we have observed the demand of protection for RTI activist through the Telegraph in Ranchi¹⁵⁸, A group of RTI activists across the state on Wednesday staged a protest outside

¹⁵⁶ <https://www.livelaw.in/rti-and-judiciary/>

¹⁵⁷ <https://thewire.in/law/supreme-court-dipak-misra-retirement>.

¹⁵⁸ The Telegraph: Ranchi: Thursday, December 07, 2017.

Raj Bhavan to demand police security against harassment by bureaucrats and government officials. Over a dozen members Suchana Adhikar Manch and Bhartiya Suchana Adhikar Parisad alleged that had not formulated a policy to protect the whistleblowers despite the repeated advisories from the Union ministry of home affairs. "In Jharkhand, over a dozen cases of murder and victimisation of RTI activists have taken place, but most of them remained unreported. Our life is under threat because we expose corruption. We are implicated in false cases," said Anand Kishore, an activist from Gumla district.

In 2011, NREGS (National Rural Employment Guarantee Scheme) activist Niyamat Ansar, an associate of economist Jean Dreze was lynched. In 2008, civil engineer-turned-activist Lalit Mehta, also close to Dreze, was killed in Palamau. In the same year, Kameshwar Yadav, an MGNREGS (Mahatma Gandhi National Rural Employment Guarantee Scheme) activist from Giridih district, was shot dead. Manoj Rana of Hazaribagh district had exposed two scams in Katkamsandi block involving the construction of a government school building and purchase of solar lights at high cost by the mukhiya of Dhengra panchayat this year. "I lost my right eye after goons attacked and grievously injured me. I had to stay in a Ranchi-based hospital for more than a month. Police deliberately prepared a mild injury report. I still get threats. My family doesn't want me to do any activism for public cause," Rana said. In 2014, Babloo Sah of Mandu block in Ramgarh district had exposed corruption in the construction of five houses for BPL families. An inquiry was conducted and five panchayat sevaks were suspended.

"The then Mandu BDO Jai Kumar threatened to harm me and my family over phone. I submitted evidences to the government and police but no action was taken," he said. Ravikant Paswan of Latehar district is facing three cases after he exposed a scam related to the illegal settlement of government land under Latehar Sadar block.

"One day I visited the block office and found an FIR was lodged against me for manhandling block officials and employees. There is a strong nexus between police, civil administration and middlemen to implicate activists like us," Paswan said. They alleged that the State Information Commission was also not interested in the protection of RTI activists.

"The state commission is an apex body and should take suo motu cognisance of the harassment meted out to RTI activists. One of our friends Darsh Choudhary of Jamshedpur has been fighting a legal battle for the past few years after he was implicated in a false case. His only fault was that he had exposed corruption in government health service in Jamshedpur," an activist from Dumka, Ranjan Kumar, said. State chief information commissioner Aditya Swarup said no RTI activist had so far lodged any harassment complaint before the commission.

"State commission can act in such cases as per the power vested in the RTI Act. I am not aware of their demonstration today (Wednesday). To my knowledge one Darsh Choudhary of Jamshedpur had filed a complaint and I had directed the Jamshedpur SP to look into the matter," he said.

Promulgated in 2005, the Right to Information Act proved a potent tool for common people and activists to expose corruption. In view of the numerous attacks on RTI activists across the country, the department of personnel & training under the Union home affairs ministry had on May 2011 set up a task force to review the provisions of the act and its effective implementation and recommended measures for protection of persons seeking information under it.¹⁵⁹

Indian parliament has really given its citizens one of the most powerful transparency laws to empower the citizen to monitor their governments, curb corruption and get better governance. This can lead to Swaraj. If the commissions and the courts interpret the RTI Act giving more importance to exemptions and widening their scope, this great law may become 'Right to Denial of Information'. Citizens need to become aware of their responsibility to protect this law. Everyone in power dislikes transparency applied to them. Most of the bad orders are copied by everyone, whereas the good orders are being swamped. This would be a sad regression for democracy.¹⁶⁰

8.4 SUMMARY:

The Supreme Court of India consistently held from 1975 to 2005 that RTI is a fundamental right of citizens. The nation recognises its great contribution to the framing of the Right to Information Act. Indian parliament has really given its citizens one of the most powerful transparency laws to empower the citizen to monitor their governments, curb corruption and get better governance. This can lead to Swaraj. If the commissions and the courts interpret the RTI Act giving more importance to exemptions and widening their scope, this great law may become 'Right to Denial of Information'. Citizens need to become aware of their responsibility to protect this law. Everyone in power dislikes transparency applied to them. Most of the bad orders are copied by everyone, whereas the good orders are being swamped. This would be a sad regression for democracy.

8.5 GLOSSORY:

RTI Portal: A online Gateway to the citizens for quick search of information.

RTI: The Act is a big step towards making the citizens informed about the activities of the Government.

8.6 SAQS

1 Short Question:

¹⁵⁹ <http://mahitiadhikar.blogspot.com/2017/12/rti-activists-seek-safety.html>

¹⁶⁰ <https://www.livelaw.in/rti-and-judiciary/>

Judiciary and Important Legislature effecting RTI

- a) Write two objectives of RTI Act.
- b) What you mean by transparency?

2. Fill in the blanks

- a) RTI is a right of citizens.
- b) Right to Information Act proved a potent for common people and activists to expose corruption

3. True & False

- a) Indian parliament has really given its citizens one of the most powerful transparency laws in the form of RTI Act.
- b) There is the need of laws to protect the life of RTI activists.

8.7 REFERENCES

1. <https://www.livelaw.in/rti-and-judiciary/>
2. <https://thewire.in/law/supreme-court-dipak-misra-retirement>.
3. The Telegraph: Ranchi: Thursday, December 07, 2017.
4. <http://mahitiadhikar.blogspot.com/2017/12/rti-activists-seek-safety.html>
5. <https://www.livelaw.in/rti-and-judiciary/>

8.8 SUGGESTED READINGS

6. Dr. Neelam Kant, 2014, published by Orient Publishing Company.
7. Right to Information Act, 2005
8. Whistle Blowers Protection Act, 2011
9. <http://www.iasparliament.com/blogs/pdf/protection-for-rti-activists>
10. <https://rti.gov.in/rtiact.asp>

8.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

- a) Write a detailed note on the role of Supreme Court to protect RTI activists.
- b) Give a brief note on need of transparency in a country like India.

Answers

SAQS

1. (a) Refer 8.1 , (b) Refer 8.3
2. (a) Fundamental (b) Tool
3. (a) True, (b)True

Judiciary and Important Legislature effecting RTI

Terminal Questions and Answers

(b) Refer 8.3 (b) Refer 8.2 & 8.3

UNIT- 9

LAWS PROTECTING THE RTI ACTIVISTS

9.1 INTRODUCTION

9.2 OBJECTIVES

9.3 SUBJECT

9.3.1 RIGHT TO INFORMATION ACT, 2005

9.3.2 OBJECTIVES OF THE RIGHT TO INFORMATION ACT

9.3.3 WHISTLE BLOWERS PROTECTION ACT

9.3.3.1 SALIENT FEATURES

9.3.3.2 DEFINITIONS

9.3.3.3 TYPES OF WHISTLEBLOWERS

9.4 SUMMARY:

9.5 GLOSSARY

9.6 SAQS

9.7 REFERENCES

9.8 SUGGESTED READINGS

9.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

9.1 INTRODUCTION:

Many RTI activists, including policemen, have been harassed and even murdered for seeking information to "promote transparency and accountability in the working of every public authority" in [India](#). Many face assaults on a regular basis. People seeking information from their [gram panchayat](#) and the local administration also face social ostracism. A few activists who sought information under RTI related to [MNREGA](#) scams, were killed. Many threats and attacks (including murder) go unreported by the media. Following are the laws to protect the RTI activists in India:

9.2 OBJECTIVES: After reading this unit you will be able to know about the Laws protecting the RTI Activists

9.3 SUBJECT:

9.3.1 RIGHT TO INFORMATION ACT, 2005

Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions It provides a– RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments

9.3.2 OBJECTIVES OF THE RIGHT TO INFORMATION ACT

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

9.3.3 WHISTLE BLOWERS PROTECTION ACT

Whistle Blowers Protection Act, 2014 is an Act in the Parliament of India which provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices.

The wrongdoing might take the form of fraud, corruption or mismanagement. The Act will also ensure punishment for false or frivolous complaints.¹⁶¹

The Act was approved by the [Cabinet of India](#) as part of a drive to eliminate corruption in the country's bureaucracy¹⁶² and passed by the [Lok Sabha](#) on 27 December 2011.¹⁶³ The Bill was passed by [Rajya Sabha](#) on 21 February 2014 and received the [President's](#) assent on 9 May 2014.¹⁶⁴

9.3.3.1 Salient Features¹⁶⁵

1. The Act seeks to protect whistle blowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offense by a public servant.
2. Any public servant or any other person including a non-governmental organization may make such a disclosure to the Central or State Vigilance Commission.
3. Every complaint has to include the identity of the complainant.
4. The Vigilance Commission shall not disclose the identity of the complainant except to the head of the department if he deems it necessary. The Act penalizes any person who has disclosed the identity of the complainant.
5. The Act prescribes penalties for knowingly making false complaints.

9.3.3.2 Some important Definitions of whistle blowing are:

R.M Green (1994) defines a whistleblower as an Employee who, perceiving an organizational practice that he believes to be illegal or unethical, seeks to stop this practice by alerting top management or failing that by notifying authorities outside the organization.

Sekhar (2002) defines whistleblowing as an attempt by an employee or a former employee of an organization to disclose what he proclaims to be wrong doing in or by that organization.

Koehn (2003) whistle blowing occurs when an employee informs the public of inappropriate activities going on inside the organization.

Boatright (2003) whistleblowing is the release of information by a member or former member of an organization this is evidence of illegal and/or immoral conduct in the organization that is not in the public interest.

¹⁶¹ India, Times of (22 February 2014). Times of India <http://timesofindia.indiatimes.com/india/After-2-years-and-no-changes-Whistleblowers-Bill-cleared/articleshow/30815449.cms>. Retrieved 22 February 2014. Missing or empty |title= (help)

¹⁶² "Whistleblowers Protection Bill soon, Govt tells RS". The Times Of India. 10 July 2009. Retrieved 2011-05-20. "Cabinet clears whistleblower protection Bill". The Hindu. 10 August 2010. Retrieved 2011-05-20.

¹⁶³<http://www.prsindia.org/uploads/media/Public%20Disclosure/whistle%20blower%20as%20passed%20by%20OLS.pdf>

¹⁶⁴"Indian Parliament passes Whistleblowers Protection Bill 2011". IANS. news.biharprabha.com. Retrieved 21 February 2014. "Whistle Blowers Protection Act, 2011" (PDF). *Gazette of India*. Retrieved 13 May 2014.

¹⁶⁵ <http://www.legalservicesindia.com/article/1693/Whistleblowers-and-their-Protection-in-India.html>

9.3.3.3 Types of Whistleblowers¹⁶⁶

Internal: When the whistleblower reports the wrong doings to the officials at higher position in the organization. The usual subjects of internal whistleblowing are disloyalty, improper conduct, indiscipline, insubordination, disobedience etc.

External: Where the wrongdoings are reported to the people outside the organization like media, public interest groups or enforcement agencies it is called external whistleblowing.

Alumini: When the whistleblowing is done by the former employee of the organization it is called alumini whistle blowing.

Open: When the identity of the whistleblower is revealed, it is called Open Whistle Blowing.

Personal: Where the organizational wrongdoings are to harm one person only, disclosing such wrong doings it is called personal whistle blowing.

Impersonal: When the wrong doing is to harm others, it is called impersonal whistle blowing.

Government: When a disclosure is made about wrong doings or unethical practices adopted by the officials of the Government.

Corporate: When a disclosure is made about the wrongdoings in a business corporation, it is called corporate whistle blowing.

9.4 SUMMARY:

It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government. Whistle Blowers Protection Act, 2014 is an Act in the Parliament of India which provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices. The wrongdoing might take the form of fraud, corruption or mismanagement. The Act will also ensure punishment for false or frivolous complaints.

9.5 GLOSSARY

a) Whistle Blowers: anyone who exposes alleged wrongdoing in government bodies, projects and offices.

b) RTI Portal: A Gateway to the citizens for quick search of information.

¹⁶⁶ <http://www.legalservicesindia.com/article/1693/Whistleblowers-and-their-Protection-in-India.html>

9.6 SAQS

1. SAQs

- a) Define Whistle Blowers.
- b) What are the objectives of RTI?

2. Fill in the blanks:

- a) The RTI Act is a big step towards making the citizensabout the activities of the Government.
- b) Whistle Blowers Act, provides a mechanism toalleged corruption and misuse of power.

3. True & False:

- a) RTI came into effect in 2005.
- b) Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government.

9.7 REFERENCES

1. *India, Times of (22 February 2014). Times of India*
<http://timesofindia.indiatimes.com/india/After-2-years-and-no-changes-Whistleblowers-Bill-cleared/articleshow/30815449.cms>. Retrieved 22 February 2014.
Missing or empty |title= ([help](#))
2. "Whistleblowers Protection Bill soon, Govt tells RS". The Times Of India. 10 July 2009. Retrieved 2011-05-20. "Cabinet clears whistleblower protection Bill". The Hindu. 10 August 2010. Retrieved 2011-05-20.
3. <http://www.prsindia.org/uploads/media/Public%20Disclosure/whistle%20blower%20as%20passed%20by%20LS.pdf>
4. "Indian Parliament passes Whistleblowers Protection Bill 2011". IANS. news.biharprabha.com. Retrieved 21 February 2014. "*Whistle Blowers Protection Act, 2011*" (PDF). *Gazette of India*. Retrieved 13 May 2014.
5. <http://www.legalservicesindia.com/article/1693/Whistleblowers-and-their-Protection-in-India.html>
6. <http://www.legalservicesindia.com/article/1693/Whistleblowers-and-their-Protection-in-India.html>

9.8 SUGGESTED READINGS

11. Dr. Neelam Kant, 2014, published by Orient Publishing Company.
 12. Right to Information Act, 2005
 13. Whistle Blowers Protection Act, 2011
 14. <http://www.iasparliament.com/blogs/pdf/protection-for-rti-activists>
 15. <https://rti.gov.in/rtiact.asp>
-

9.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

- a) Write a detailed note on objectives of RTI Act.
- b) Discuss the Whistle Blowers role in protection of RTI activists.

Answers

SAQS

1. (a) Refer 9.2.2 , (b)Refer 9.1
2. (a) informed (b) investigate.
3. (a) True, (b)True

Terminal Questions and Answers

- (c) Refer 9.1 (b) Refer 9.2, 9.3 & 9.4

UNIT 10-

OFFICIAL SECRETS ACT, 1923

10.1 INTRODUCTION

10.2 OBJECTIVES

10.3 SUBJECT

10.3.1 The Official Secrets Act, 1923: Introduction

10.3.2 Sections contained in the Official Secrets Act, 1923

10.3.3 Contradiction with Statutory Laws

10.3.4 Provisions of Right to Information Act, 2005 for seeking information

10.3.5 Exemptions under the Right to Information Act, 2005

10.3.6 The Official Secrets Act and its affect on the RTI Act

103.7 Cases: Official Secrets Act, 1923

10.4 SUMMARY

10.5 GLOSSARY

10.6 SAQS

10.7 REFERENCES

10.8 SUGGESTED READINGS

10.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

10.1 INTRODUCTION

The Official Secret Act 1923 is India's anti-[espionage](#) act held over from the British [colonial period](#). It states clearly that actions which involve helping an enemy state against India are strongly condemned. It also states that one cannot approach, inspect, or even pass over a prohibited government site or area. According to this Act, helping the enemy state can be in the form of communicating a sketch, plan, model of an official secret, or of official codes or [passwords](#), to the enemy.

Journalists have to help members of the police forces above the rank of the sub-Inspector and members of the military with investigation regarding an offense, up to and including revealing his sources of information. Under the Act, search warrants may be issued at any time if the magistrate determines that based on the evidence there is enough danger to the security of the state. Uninterested members of the public may be excluded from court proceedings if the prosecution feels that any information which is going to be passed on during the proceedings is sensitive. This also includes media.

Though the use of the Act by the government may be rare, yet its effect on the press freedom cannot be denied. Judicial review provides some safeguard to an individual against government arbitrariness in the matter of official secrecy. It is a court of law which has to determine whether a person has committed an offence under the Act or not. In this chapter we will study in brief the contents of the Official Secret Act 1923 and try to compare them with the Right to Information Act, 2005, especially the provisions which show a kind of contradictions.

10.2 OBJECTIVES

After studying this unit you will be able to:-

- Know about the historical aspect of the Official Secrets Act, 1923.
- Understand the Official Secrets Act, 1923 and its use.
- Comparison in the related provisions of the Right to Information Act, 2005 and the Official Secrets Act, 1923
- Know about some of the judicial pronouncements.

10.3 SUBJECT

10.3.1 The Official Secrets Act, 1923: Introduction

The Official Secrets Act, 1923 (Act No. 19 of 1923) dated 10th May, 1923, was enacted with the view to consolidate and amend the law relating to official secrets. The Act extends to whole of India and should apply to servants of the Government and to all citizen of India whether inland citizen or outside India.

The basis of the Official Secrets Act, 1923 can be traced from that of Notification issued by Foreign Department of the Government of India in the year 1843 which was connected with matter of prohibition of making of Official documents public. The British Colony of Gibraltar issued an Ordinance in the year 1887 dealing with such prohibition including making of sketch, drawing or taking photograph of fortification in the garrison. As such in the year 1888 the Indian Fortification Bill was introduced in British Parliament and on 1889 the Official Secrets Act (Act No. 16 of 1889) was passed. However, looking to the drawbacks in application of this Act, the Army Authorities asked for certain changes in the law, and in the 1902 the Amendment Bill was finally drafted and finally, the Indian Official Secrets (Amendment) Act, 1904 was passed. Besides this there was another enactment dealing with same topic i.e. The Defence of India (Criminal Law Amendment) Act, 1915. Finally, this Act of 1923 was enacted by accepting the Bill on 21st March, 1923 and on 2nd April, 1923 the Act was received the assent of Governor General and on 14th April of the same it was published in the Gazette of India and it has its effect force ever since.

10.3.2 Sections contained in the Official Secrets Act, 1923

There are 15 Sections in the Official Secrets Act, 1923 and these sections provide various provisions helpful for implementation of the Act. We can take a note of the provisions as follows-

- (i) Section 1 provides the name and the extent of the Act that it is applicable to servants of the Government and to all citizen of India whether inland citizen or outside India.
- (ii) Section 2 deals with the definition clause and provides the definitions of expressions referring to communicating, document, model, munitions of war, Office under government, photograph, prohibited place, sketch and Superintendent of Police.
- (iii) Section 3 is deals with the object of making provision of this Act more effective. This section provides for penalties for spying, where if any one approached, inspected, etc. any vicinity or place for making any sketch, plan, model, etc. which possibly to be useful to any enemy should be liable to be punished under this provision with imprisonment which is maximum 14 years as provided under this provisions.
- (iv) Section 4 of the Act makes the act of communicating or even attempting to communicate with foreign agents, is to be treated as relevant evidence for proving

that such person communicating or attempting communication is against the safety or interests of State.

- (v) Section 5 provides that, if the person having possession of any secret official code, etc. used such secret material in prohibited place or otherwise in the manner which is likely to assist an enemy and cause harm to sovereignty and integrity of India then such person to be held guilty under this Act.
- (vi) Section 6 deals with unauthorized use of uniforms, falsification of reports, forgery, personation and false documents.
- (vii) Section 7 deals with interfering with officers of the Police or members of the Armed Forces of the Union within the vicinity of any prohibited place.
- (viii) Section 8 imposes a duty upon every person to provide information as to commission of any offence under this Act to the concerned officer on demand otherwise he may be liable for the punishment.
- (ix) Section 9 applies to any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment as if he had committed such offence.
- (x) Section 10 provides penalty for harbouring spies.
- (xi) Section 11 deals with the procedure of search warrants and Section 12 provides the application of section 337 of Act 5 of 1898 as apply to offences under sections 3, 5 and 7 of this Act.
- (xii) Section 13 of the Act imposes restriction on trial of offences under this Act, where the Court empowered by the Central Government, other than that of Magistrate of First Class, should have jurisdiction to try such proceedings.
- (xiii) Section 14 deals with exclusion of public from proceedings in certain cases.
- (xiv) Section 15 provides provision for offences by companies and liability thereon.

10.3.3 Contradiction with Statutory Laws

The Official Secrets Act, 1923 was formed under the British rule and as it was framed with intention of protecting British Officials from questions raised by the Indian Media. It is hindrance in the transparency and freedom of press.

The Official Secrets Act has been in contradictions with other statutory laws. The biggest contradiction is present in our Constitution. Article 19(1) of Indian Constitution provides us with the Right to Freedom of Speech and Expression. The Official Secrets Act violate this right by virtue of restrictions put by it. The Act also contradicts Right to Information (RTI) Act, 2005. RTI provide citizens to seek information from any Centre or State's ministerial department regarding any matter with certain exceptions.

10.3.4 Provisions of Right to Information Act, 2005 for seeking information

Judiciary and Important Legislature effecting RTI

Section 6 of the Right to Information Act, 2005 provides provision for making request as follows-

Section 6- Request for obtaining information.—

(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) The Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her: Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

(i) Which is held by another public authority; or

(ii) the subject matter of which 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 such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer: Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

10.3.5 Exemptions under the Right to Information Act, 2005

Exemptions have been provided under the Right to Information Act, 2005, whereby certain information can be denied are as follows

Section 8- Exemption from disclosure of information.—

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

Judiciary and Important Legislature effecting RTI

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 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.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the

Judiciary and Important Legislature effecting RTI

date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

10.3.6 The Official Secrets Act and its effect on the RTI Act

There is overriding effect of the Right to Information Act, 2005 upon the Official Secrets Act as per according to Section 22 of the RTI Act- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. But it cannot be said that documents covered in the Official Secrets Act are also covered within the ambit of RTI Act as based on the level of sensitivity of the information and the implications of its disclosure for national security, the official documents in India are classified as:

1. Top Secret
2. Secret
3. Confidential
4. Restricted.

Despite of requests from activists, the Ministry of Home Affairs (MHA) has not disclosed the criteria for classification. The Official Secrets Act does not define the term 'secret' or the phrase 'official secrets'. From this we can ascertain that although Right to Information Act, 2005 has been implemented but somehow discretion lies on the public servants to classify it as secret.

Secrets are an essential tool in the hands of a government to protect national security and national interests, but transparency and accountability are essential tools at the disposal of public opinion in order to ensure that the requirements of secrecy are not over-stated and over-used in order to mislead the people and prevent them from exercising their role as citizens with the right to hold their political leaders and public servants accountable for their sins of commission and omission.

10.3.7 Cases: Official Secrets Act, 1923

Iftikhar Gilani case

In June 2002, journalist Iftikhar Gilani was, arrested for violating the OSA 1923. He was charged under the OSA, with a case under the Obscenity Act added to it. The first military report suggested that the information he was accused of holding was "secret" despite being publicly available. The second military intelligence report contradicted this, stating that there was no "official secret". Even after this, the government denied the opinion of the military and was on the verge of challenging it when the contradictions were exposed in the press.

The military reported that, "the information contained in the document is easily available" and "the documents carries no security classified information and the information seems to have been gathered from open sources". On 13 January 2004, the government withdrew its case against him to prevent having two of its ministries having to give contradictory opinions. Gilani was released the same month.

Santanu Saikia case

In a major boost to freedom of press, a Delhi court has ruled that the publication of a document merely labelled "secret" shall not render the journalist liable under the colonial relic, Official Secrets Act, 1923 (OSA).

Saikia was arrested in February, 2015 in another case that the police said involved the writing of stories and analyses from documents allegedly stolen from the government. He was released on bail in May after spending 80 days in jail. Further Additional Session Judge discharged Santanu relying on the verdict of Supreme Court in the year 1996 (*Sama Alna Abdulla v. State of Gujarat*).

10.4 SUMMARY

The Official Secret Act 1923 is India's anti-[espionage](#) act held over from the British [colonial period](#). It states clearly that actions which involve helping an enemy state against India are strongly condemned. This Act of 1923 was enacted by accepting the Bill on 21st March, 1923 and on 2nd April, 1923 the Act was received the assent of Governor General and on 14th April of the same it was published in the Gazette of India and it has its effect force ever since.

There are 15 Sections in the Official Secrets Act, 1923 and these sections provide various provisions helpful for implementation of the Act. The aim of the Official Secret Act, 1923 seems as if it was made with intention to hide the information during the British period on the contrary Right to Information Act, 2005 came in force which has been implemented to bring transparency and abolish corruption. Both the Acts are somehow contrary to each other although there is overriding effect of the RTI Act upon the Official Secret Act 1923 but some protection is there in the Official Secret Act 1923 whereby discretion can be used by the Government in providing information.

10.5 GLOSSARY

Espionage-the practice of spying or of using spies.

Prohibition- the action of forbidding something, especially by law.

Implementation-execution

Vicinity- the area near or surrounding a particular place.

Harbouring- give a home or shelter to.

Exemptions- the action of freeing or state of being free from an obligation or liability.

10.6 SAQS

1. Short Answer Questions-

a. Which section of the Official Secrets Act, 1923 deals with the definitions?

b. how many types of secrets are there?

2 Fill in the blanks-

A. Section 5 of the Official Secrets Act, 1923 deals with..... .

B. Seeking information under RTI At is provided under Section.....

3. True/False type questions

1. The Official Secrets Act, 1923 was framed under the regime of British Rule. (True/False)

2. There is overriding effect of the RTI Act. (True/False)

10.7 REFERENCES

a) The Official Secrets Act, 1923.

b) The Right to Information Act, 2005

c) <https://lawyerslaw.org/the-official-secrets-act-1923>.

d) <http://wikipedia.org/wiki/officialsecretsact>

e) [https:// www.quora.com/How-does-the-Official-Secrets-Act-affect-the-RTI-Act-Right-to-Information](https://www.quora.com/How-does-the-Official-Secrets-Act-affect-the-RTI-Act-Right-to-Information)

f) <https://timesofindia.indiatimes.com/india/Court-redefines-official-secret-relief-to-scribe/articleshow/4192355.cms?referral=PM>

g) Article written by Akul Dev Saha see <https://www.vskills.in/certification/blog/official-secrets-act-1923/>

10.8 SUGGESTED READINGS

1. The Official Secrets Act, 1923.

2. The Right to Information Act, 2005.

10.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Briefly mention various sections of the Official Secrets Act, 1923.

Judiciary and Important Legislature effecting RTI

2. What are the provisions of Section 6 of the RTI Act,2005.

3. Write in few words about the cases decided by the courts for the Official Secrets Act,1923.

Answers

SAQS

1. (a)Section 2,

(b) Four.

2. (A) if the person having possession of any secret official code, etc. used such secret material in prohibited place or otherwise in the manner which is likely to assist an enemy and cause harm to sovereignty and integrity of India then such person to be held guilty under this Act.

(B) Section 6 of the RTI Act.

3. (1) True (2) True

Terminal Questions and Answers

(1).Refer 10.3.2, (2) 10.3.4 (3) 10.3.6

UNIT 11-

PUBLIC RECORDS ACT, 1993

11.1 INTRODUCTION

11.2 OBJECTIVES

11.3 SUBJECT

11.3.1 The Public Records Act, 1993: Introduction

11.3.2 Sections contained in the Public Records Act, 1993

11.3.3 Definition of Public Records under the Public Records Act, 1993

11.3.4 Definition of Record under the Right to Information Act, 2005

11.3.5 Definition of Information under the Right to Information Act, 2005

11.3.6 Comparison in definition of Record and Public Records in the Acts.

11.3.7 Responsibility of the Records Officer under the Public Records Act, 1993

11.3.8 Obligations of public authorities under the Right to Information Act, 2005

11.3.9 Comparison of Responsibilities and Obligations pertaining to records

11.4 SUMMARY

11.5 GLOSSARY

11.6 SAQS

11.7 REFERENCES

11.8 SUGGESTED READINGS

11.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

11.1 INTRODUCTION

The Public Records Act, 1993 has been enacted by the Parliament to regulate the management, administration and preservation of public records of the Central Government, Union Territory Administrations, public sector undertakings, statutory bodies and

corporations, commissions and committees constituted by the Central Government or a Union Territory Administration and matters connected therewith or incidental thereto.

The Right to Information Act, 2005 (RTI Act, 2005) has provided for certain obligations that every “Public Authority” is required to fulfill in order to maintain records and it is mandatory for every public authority to publish within one hundred and twenty days the particulars provide in the Act.

In the Public Records Act, 1993 responsibility to arrange and maintain records is given to the Record Officer and in the Right to Information Act, 2005 the kind of responsibility is imposed on the Public Authority. In this unit we are going to study the provisions of both the Act and try to understand similarities relating thereto.

11.2 OBJECTIVES

After studying this unit you will be able to:-

- Know about the historical aspect of the Public Records Act, 1993.
- Understand the differences of Public Records Act, 1993 and Right to Information Act, 2005.
- A comparative study of both Acts.
- Salient features of the Public Records Act, 1993

11.3.1 The Public Records Act, 1993: Introduction

The Public Records Act has been incorporated on 22nd December, 1993. This Act has been formulated to standardize the management, administration and preservation of public records of the Central Government, Union Territory Administration, Committees formed by the Central Government and such other bodies, corporations and undertakings of the Central Government and Union Territory Administrations.

The Record Officer shall be responsible for arrangement, maintenance and preservation of public records. He shall take necessary advice from both the National Archive of India and Union Territory for Archives. He shall submit annual reports every year to the Director General. This Act gave the basic structure on how to maintain the public records but there was no proper regulatory mechanism formed to monitor this Act.

11.3.2 Sections contained in the Public Records Act, 1993

There are 18 Sections in the Public Records Act, 1993 and these sections provide various provisions helpful for implementation of the Act. We can take a note of the important provisions as follows-

- (xv) Section 1 provides the name and provision for its enactment.
- (xvi) Section 2 deals with the definition clause and provides the definitions of expressions referring to "Board", "Director General", "Head of the Archives", public records, "records officer "
- (xvii) Section 3 provides power to Central Government to coordinate, regulate and supervise the operations connected with the administration, management, preservation, selection, disposal and retirement of public records under this Act.
- (xviii) Section 4 provides that No person shall take or cause to be taken out of India any public records without the prior approval of the Central Government; subject to proviso.
- (xix) Section 5 deals with the appointment of Record Officer .
- (xx) Section 6 provides responsibilities of the Record Officer.
- (xxi) Section 7 states for taking action by the Record Officer in case of any destruction or unauthorized removal of any public record in his custody.
- (xxii) Section 8 deals with destruction or disposal of public records.
- (xxiii) Section 9 provides punishment for contraventions of section 4 or 8.
- (xxiv) Section 10 states that No public records bearing security classification shall be transferred to the National Archives of India or the Archives of the Union Territory.
- (xxv) Section 11 deals with receipt of records from private sources.
- (xxvi) Section 12 deals with the provision of access to public records.
- (xxvii) Section 13 states the formation of Archival Advisory Board.
- (xxviii) Section 14 provides the functions of the Board.
- (xxix) Section 15 states the Power of Director General to lay down norms and standards for courses in Archival science.
- (xxx) Section 16 gives the protection of action taken in good faith or intended to be done in pursuance of this Act or the rules made thereunder.
- (xxxi) Section 17 vests the power making of rules in Central Government.
- (xxxii) Section 17 makes it mandatory to laying of rules before Parliament.

11.3.3 Definition of Public Records under the Public Records Act, 1993

Section 2(e) of the Public Records Act, 1993 defines the Public Record that is to be used for the purpose of the Act, it is as follows-

"public records" includes –

- i. any document, manuscript and file;
- ii. any microfilm, microfiche and facsimile copy of a document;

Judiciary and Important Legislature effecting RTI

- iii any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- iv any other material produced by a computer or by any other device, of any records creating agency;

11.3.4 Definition of Record under the Right to Information Act, 2005

Section 2(i) of the Right to information Act, 2005 defines record as follows-

- Section 2 (i) “record” includes—
- (i) any document, manuscript and file;
 - (ii) any microfilm, microfiche and facsimile copy of a document;
 - (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
 - (iv) any other material produced by a computer or any other device;

11.3.5 Definition of Information under the Right to Information Act, 2005

According to Section 2(f) of the Right to information Act, 2005 “Information means”- any material in any form, including records, documents, memos, e-mails, opinions, 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;

11.3.6 Comparison in definition of Record and Public Records in the Acts.

From the above mentioned definitions we can compare the definitions provided in both the acts and can conclude that there is no difference in the definitions as provided in both Acts. From this dimension both Acts give similar meaning to the words Public Records and Records in respective Acts.

Further it can be ascertained that in the Right to Information Act, 2005 information is separately provide for which the public authority is bound to provide in accordance with the provisions of the Act and it includes any material in any form, including records, documents, memos, e-mails, opinions, 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.

11.3.7 Responsibility of the Records Officer under the Public Records Act, 1993

Judiciary and Important Legislature effecting RTI

Section 6 of the Public Records Act, 1993 imposes responsibility on the Record officer as follows-

6. (1) The records officer shall be responsible for –

i. proper arrangement, maintenance and preservation of public records under his charge;
ii. periodical review of all public records and weeding out public records of ephemeral value;

iii. appraisal of public records which are more than twenty-five years old in consultation with the National Archives of India or, as the case may be, the Archives of the Union territory with a view to retaining public records of permanent value;

iv. destruction of public records in such manner and subject to such conditions as may be prescribed under sub-section (1) of section 8;

v. compilation of a schedule of retention for public records in consultation with the National Archives of India or, as the case may be, the Archives of the Union Territory;

vi. periodical review for downgrading of classified public records in such manner as may be prescribed;

vii. adoption of such standards, procedures and techniques as may be recommended from time to time by the National Archives of India for improvement of record management system and maintenance of security of public records;

viii. compilation of annual indices of public records;

ix. compilation of organizational history and annual supplement thereto;

x. assisting the National Archives of India or, as the case may be, the Archives of the Union territory for public records management;

xi. submission of annual report to the Director General or, as the case may be head of the Archives in such manner as may be prescribed;

xii. transferring of records of any defunct body to the National Archives of India or the Archives of the Union Territory, as the case may be, for preservation. (2) The records officer shall act under the direction of the Director General or, as the case may be, head of the Archives while discharging the responsibilities specified in sub-section (1).

11.3.8 Obligations of public authorities under the Right to Information Act, 2005

Section 4(1) (a) of the Right to information Act, 2005 imposes Obligations on the public authorities to –

maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate

to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

11.3.9 Comparison of Responsibilities and Obligations pertaining to records

From the above mentioned provisions it reveals that Responsibilities in the Record Officer are similar in somehow with those of the Obligations of the Public Authorities and it can be said that Record officer under the Public Records Act, 1993 has more duties corresponding to the Public Records in comparison to Public Authorities.

11.4 SUMMARY

The Public Records Act, 1993 has been enacted by the Parliament to regulate the management, administration and preservation of public records of the Central Government, Union Territory Administrations, public sector undertakings, statutory bodies and corporations, commissions and committees constituted by the Central Government or a Union Territory Administration. The Right to Information Act, 2005 (RTI Act, 2005) has provided for certain obligations that every "Public Authority" is required to fulfill in order to maintain records. In the Public Records Act, 1993 responsibility to arrange and maintain records is given to the Record Officer, Section 2 deals with the definition clause and provides the definitions of expressions referring to "Board", "Director General", "Head of the Archives", public records, "records officer" and Section 6 provides responsibilities of the Record Officer. Both Acts give similar meaning to the words Public Records and Records in respective Acts and further it can be said that Record officer under the Public Records Act, 1993 has more duties corresponding to the Public Records in comparison to Public Authorities.

10.5 GLOSSARY

Management- the process of dealing with.

Administration- Commanding or control.

Preservation- conservation, care

Maintainance- to maintain

10.6 SAQS

1. Short Answer Questions-

- a. Define Records under the Right to information Act, 2005?
 - b. Define information as provided under the Right to information Act, 2005?
- 2 Fill in the blanks-
- C. There are Sections in the Public Records Act, 1993.
 - D. Definition of Public Records is given under section..... of the Public Records Act,1993
3. True/False type questions
1. Any document, manuscript and file is used in definition of both Acts. (True/False)
 2. Obligations on the public authorities are there on both the Acts. (True/False)

11.7 REFERENCES

- a) Public Records Act, 1993.
- b) The Right to Information Act, 2005
- c) <https://lawyerslaw.org/the-public-records-act-1993/>

11.8 SUGGESTED READINGS

1. The Public Records Act, 1993.
2. The Right to Information Act, 2005.

11.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Briefly mention various sections of the Public Records Act, 1993.
2. Compare definition of Records and Public Records.
3. What are the Responsibilities of the Record Officer?

Answers

SAQS

1. (a)11.3.4,
(b) 11.3.5.
2. (A18

(B) Section 2(e) of the Public Records Act,1993.

3. (1) True (2) False

Terminal Questions and Answers

- (1).Refer 11.3.2, (2) 11.3.6 (3) 11.3.7

UNIT 12

REPRESENTATION OF PEOPLES ACT, 1951

12.1 INTRODUCTION

12.2 OBJECTIVES

12.3 SUBJECT

12.3.1 The Representation of People Act, 1951: Introduction

12.3.2 Salient features of the Representation of People's Act

12.3.3 Public Authority under Right to Information Act, 2005

12.3.4 Parties can't be under RTI: Centres tells Supreme Court

12.3.5 SC asks EC to look into plea to bring parties under RTI law

12.3.6 Reasons for denying the political parties to be covered under the definition of public authority

12.3.7 Declaration of donation by the political parties

12.3.8 Provision of the Right to Information Act, 2005

12.3.9 People's Union of Civil Liberties (P.U.C.L.) & Anr versus Union of India and another.

12.4 SUMMARY

12.5 GLOSSARY

12.6 SAQS

12.7 REFERENCES

12.8 SUGGESTED READINGS

12.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

12.1 INTRODUCTION

The Representation of People Act, 1951 is an act of Parliament of India to provide for the conduct of election of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

It was introduced in Parliament by law minister Dr. B.R. Ambedkar. The Act was enacted by the provisional parliament under Article 327 of Indian Constitution, before the first general election. After India became independent on 15 August 1947, an elected constituent assembly was set up to frame the constitution. The Indian provisional parliament before first general elections enacted the Act vide Act No.43 of 1951 for the first general election conducted on 25 October 1951. The basic qualification to represent the people is Indian citizenship and not disqualified to vote under section 16 of the Representation of People Act, 1950 read with Part II and VII of this act.

The People's Representation act provides for the actual conduct of elections in India. The act also deals with details like qualification and disqualification of members of both houses of Parliament (ie Lok Sabha and Rajyasabha) and the state legislatures (ie. State Legislative Assembly and State Legislative Council). In this chapter you will study in brief about the Representation of People Act, 1951 and whether the political parties to be considered within the ambit of public authority or not.

12.2 OBJECTIVES

After studying this unit you will be able to:-

- Know about the salient features of the Representation of People Act, 1951.
- Understand the public authority under RTI Act, 2005.
- Controversies pertaining to public authority

12.3.1 The Representation of People Act, 1951: Introduction

The Parliament of India had enacted two acts viz. Representations of Peoples Acts (RoPA), 1950 and RoPA, 1951 to provide a detailed framework around free and fair elections in the country. The 1950 law makes provisions for allocation of seats in Lok Sabha and Legislative Assemblies, Delimitation of Constituencies, Qualifications of voters, Manner of filling the seats of Rajya Sabha by Union Territory representatives etc. The 1951 Law makes provisions for conduct of elections to

Parliament and state legislatures, Qualifications and disqualifications, various offences, various doubts and disputes etc.

Some of the main provisions of the Representation of People Act, 1951 are as follows-

- Every elected candidate shall submit the declaration of his assets and liabilities within 90 days from taking oath.
- Every contesting candidate is required to maintain account of election expenses.
- Election petitions are to be heard in high Court and appeal to Supreme Court.
- The Corrupt practices which can lead to cancelling of an election include bribery, undue influence, promotion of enmity, hiring of vehicles to and from polling stations.
- In case of any enquiry, the election commission is conferred the powers of a Civil Court for summoning and enforcing the attendance of any person or any evidence.

12.3.2 Salient features of the Representation of People's Act

Part 21 of the the Indian Constitution drafted by the Constituent Assembly had mentioned for a provisional parliament. The provisional parliament enacted Representation of People's Act 1951, so that general elections could be conducted according to the rules mentioned.

Article No 43 of 1951 Representation of People's Act contains 13 parts (2 parts added as amendments). Each part is divided into different sections making it a total of 171 numbered sections (including those sections which were repealed later.)The details of the parts in Representation of People Act 1951 are as below:

1. PART I : PRELIMINARY.
2. PART II : QUALIFICATIONS AND DISQUALIFICATIONS.
3. PART III : NOTIFICATION OF GENERAL ELECTIONS.
4. PART IV : ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS.
5. PART IV A : REGISTRATION OF POLITICAL PARTIES.
6. PART V : CONDUCT OF ELECTIONS.
7. PART VA : FREE SUPPLY OF CERTAIN MATERIAL TO CANDIDATES OF RECOGNISED POLITICAL PARTIES.
8. PART VI : DISPUTES REGARDING ELECTIONS.
9. PART VII : CORRUPT PRACTICES AND ELECTORAL OFFENCES.
10. PART VIII : DISQUALIFICATIONS.
11. PART IX : BYE-ELECTIONS.
12. PART X : MISCELLANEOUS.
13. PART XI : GENERAL.

12.3.3 Public Authority under Right to Information Act,2005

Section 2(h) of the Right to Information Act,2005 defines public authority and according to this Act it is obligations of public authorities to - maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated. According to section 2(h) of the Right to Information Act,2005

“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 Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the 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;

12.3.4 Parties can't be under RTI: Centres tells Supreme Court

In 2015 Government told Supreme Court that Political parties should not be brought under the ambit of the Right to Information (RTI) Act by terming them ‘public authorities’ as this would not only hamper their smooth functioning but also help political rivals to file pleas with malicious intention to seek information.

When the RTI Act was enacted, it was never visualised that political parties would be brought within the ambit of the transparency law, the Department of Personnel and Training (DoPT) said in an affidavit in the apex court.

12.3.5 SC asks EC to look into plea to bring parties under RTI law

The Supreme Court in 2017 asked the Election Commission (EC) to examine a representation for bringing political parties under the ambit of the Right to Information (RTI) Act to make them accountable and to curb the use of black money in elections. A bench comprising Chief Justice Dipak Misra and Justices A M Khanwilkar and D Y Chandrachud asked the petitioner, Delhi BJP spokesperson and lawyer Ashwini Upadhyay, to first make the representation before the EC regarding the issue.

Judiciary and Important Legislature effecting RTI

The petitioner has sought direction to the Centre to take steps to deal with the menace of corruption and communalisation. "Declare the political parties, registered under Section 29A of the Representation of the People Act, 1951, a Public Authority under Section 2(h) of the Right to Information Act, 2005, to make them transparent and accountable to the people and curb use of black money in elections,".

The PIL has sought a direction to the EC to ensure compliance of the RTI Act and other laws related to political parties and deregister them if they fail to abide by them. "Direct the EC to ensure compliance of the Representation of the People Act, Right to Information Act, Income Tax Act and other election laws and rules so far as they relate to political parties and de-register them if they fail to comply with the election laws and rules,".

12.3.6 Reasons for denying the political parties to be covered under the definition of public authority

- The government maintained that the Central Information Commission (CIC) had made a “very liberal interpretation” of Section 2(h) of the RTI Act, which has led to an “erroneous” conclusion that political parties are public authorities.
- It was further submitted that during the process of enactment of the RTI Act, it was never visualised or considered to bring the political parties within the ambit of the said Act. If the political parties are held to be public authorities under the RTI Act, it would hamper their smooth internal working,” the affidavit said.
- Further, it is apprehended that political rivals might file RTI applications with malicious intentions to the CPIOs of political parties, thereby, adversely affecting their political functioning,” it said.
- “Declaring a political party as public authority under the RTI Act would hamper its smooth internal working which is not the objective of RTI Act and was not envisaged by Parliament under the RTI Act,” it said.
- It also said the Election Commission (EC), on its own, placed information provided by political parties under Section 29C of the RPA in public domain through its website.

12.3.7 Declaration of donation by the political parties

Section 29 C of the Representation of People Act, 1951 provides for the declaration by the political parties as under-

29C. Declaration of donation received by the political parties.—

Judiciary and Important Legislature effecting RTI

(1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961) to the Election Commission.

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3), then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.

12.3.8 Provision of the Right to Information Act,2005

Section 4 of the Right to Information Act,2005 also provides for the declaration by the public authorities. Related provisions are as follows-

4. Obligations of public authorities.—

(1) Every public authority shall—

(b) publish within one hundred and twenty days from the enactment of this Act,—

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorisations granted by it;

12.3.9 People's Union of Civil Liberties (P.U.C.L.) & Anr versus Union of India and another.

In this landmark decision Hon'ble Supreme Court of India made directions for the Election Commission of India that- The Election Commission has to issue revised instructions to ensure implementation of Section 33A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative.

12.4 SUMMARY

The Representation of People Act, 1951, since is pivotal in preventing criminals being elected as representatives, is always quoted by Supreme Court and High Court in various judgments. The purpose of the Act was to provide provisions for various elections as contained in the Act. Provisions are there in order to check the corruption and ill practice during the elections and with similar purpose Right to Information Act, 2005 was enacted. It was demanded many times to bring political parties within the ambit of Right to Information Act, 2005 but could not be succeeded. From the preceding study it can be ascertained that the purposes of both the Acts seems to be same that is to eliminate corruption but Representation of People Act, 1951 has limited scope to this extent. The Representation of People Act, 1951 is an act of Parliament of India to provide for the conduct of election of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. Provisions are therein the Representation of People Act, 1951 and Right to Information Act, 2005 for the suo motu declaration in order to bring transparency.

12.5 GLOSSARY

Obligations- duty, responsibility.

Catalogued- categorize, systematize.

malicious – intending or intended to do harm.

Compliance- the act or fact of complying with a wish or command.

12.6 SAQS

1. Short Answer Questions-

- a. In which year Representation of Peoples Act was enacted ?
- b. Which Section of RTI Act defines public authority?

2 Fill in the blanks-

- E. Section 4 of the RTI Act, 2005 deals with..... .
- F. Sectionof the Representation of People Act, 1951 provides for the declaration by the political parties

3. True/False type questions

- 1. Every elected candidate shall submit the declaration of his assets and liabilities within 90 days from taking oath. (True/False)
- 2. Election petitions are to be heard in High Court and Supreme Court(True/False)

12.7 REFERENCES

- a) Representation of People Act, 1951.
- b) The Right to Information Act, 2005
- c) <https://www.indiatoday.in/pti-feed/story/sc-asks-ec-to-look-into-plea-to-bring-parties-under-rti-law-1071726-2017-10-23>
- d) https://en.wikipedia.org/wiki/Representation_of_the_People_Act,_1951
- e) <https://www.thehindubusinessline.com/news/national/parties-cant-be-under-rti-centre-tells-supreme-court/article7575832.ece>
- f) <https://www.sci.gov.in/jonew/judis/19044.pdf>
- g) <https://www.gktoday.in/gk/representations-of-peoples-acts-ropa-1950-and-1951-key-features/>

12.8 SUGGESTED READINGS

- 1. The Representation of Peoples Act,1951.
- 2. The Right to Information Act, 2005.

12.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

- 1. Define Public Authority.
- 2. State Section 29C of the Representation of Peoples Act, 1951.

Answers

SAQS

- 1. (a)1951,
(b) 2(h).
- 2. (A) Obligations of the public authority.
(B) Section 29C.
- 3. (1) True (2) True

Judiciary and Important Legislature effecting RTI

Terminal Questions and Answers

(1).Refer 12.3.3, (2) 12.3.7