

CRTI- 104

**Constitutional and Comparative study of
RTI**

School of Law



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Constitutional and Comparative study of RTI

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CERTIFICATE IN RIGHT TO INFORMATION

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UNIT-1
FREEDOM OF SPEECH AND EXPRESSION

- 1.1 Introduction
- 1.2 Objective
- 1.3 Constitutional Perspective.
- 1.4 International Documents:
 - 1.4.1 United Nations Charter.
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- 1.13Terminal Questions and Model Questions.

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1.1- Introduction-

After almost 55 years since the coming into force of the constitution of India a national law providing for the right to information was passed by both houses of Parliament on 12 & 13 May, 2005. The Bill with 146 amendments was adopted by voice vote. This law satisfies a long standing demand of the people raised through various peoples' movements and gives content and meaning to the right to information recognized since 1973 by the Supreme Court as a concomitant of the fundamental right to freedom of speech and expression guaranteed under Art 19(1) (a). It is undoubtedly the most significant event in the life of Indian democracy. In a democracy, the people are the sovereign. They appoint governments as well as dismiss them.

1.2 Objective-

Objective of this study is to make aware to student about right to information within the ambit of speech and expression. Information brings openness. Governance is perceived by just, fair and acting in the interest of people legitimacy of a government depends upon its transparency. A transparent government if bound to be accountable. Lesser the secrecy, greater will be the faith in the government.

1.3 Constitutional Perspective-

The Constitution of India guaranteed to people at large. It also incorporates the SPSP under part IV. DPSP are not enforceable by any court nevertheless, fundamental in the governance of the country. Government may not have to answer for the breach of DPSP in a court of law but he will certainly have to answer for them before the electorate at election time.

This presupposed a vigilant citizenry. The ultimate sovereign in any democracy are the people. Unless people monitor and audit the work of their representatives, democracy is meaningless.

Right to information is the byproduct of vigilant citizenry. Right to information did not appear in the text of original constitution. It was recognised by the Supreme Court as a concomitant of the right to freedom of speech and expression in its decision in *Bennett Coleman V U09 AiR 1973SC 106*. Since then the right to information has been recognised as a fundamental right in various other decision. The right to information appeared along with the right to freedom of speech in several international human rights documents.

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1.4 International Documents-

Article 14 of the 1789 declaration of the Rights of Man made after the French Revolution read as follows- 'All the citizen have the right to decide, either personally or by their representatives, as the necessity of the public contribution, to grant this freely, to know the what use it is put,.....'

1.4.1 United Nations charter-

The right to information was recognised as its inception in 1946, when the General Assembly resolved that 'freedom of information' is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated.

In the year 1993, the United Nations Commission on Human Rights established the office of the United Nations Special Rapporteur on freedom of opinion and expression. As early as in 1995, the special Rapporteur noted that 'the right to seek or have access to information is one of the most essential elements of freedom of speech and expression. Since 1997, the commentary on the right to information has been included in each of the annual reports. In the reports, the tendency of the governments to withhold information from the people has been commented upon adversely. Similarly in annual report of year 2000, it was pointed out that the right to information was not only important for democracy and freedom, but also for facilitating public participation and realisation of the right to development. A convention on access to information, public participation in decision making and access to justice in environmental matter was adopted.

1.4.2 Universal Declaration of Human Rights-

The universal declaration of Human Rights of 1948 adopted on 10 December in article 19 said-

Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

There are two other supporting provisions and Art 20 confers the right of peaceful assembly and of association, and art 21(a) gives the right to take part in the government of the Country.

1.4.3- The International covenant on civil and political Rights-

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The International covenant on civil and political rights was adopted in 1968. Article 19 of the convention reads as follows-

- 1) Everyone shall have the right to hold opinion without interference.
- 2) Everyone shall have right to freedom of expression, this right shall include freedom to seek, receive and impart information or in print, in the form of art or through any other media of his choice.

1.4.4- The Commonwealth-

The commonwealth, voluntary association of 54 countries, has taken concrete steps to recognise human rights and democracy as part of its fundamental political values. These include fundamental human rights, and the individual's inalienable right to participate in the democratic process.

1.4.5- American States-

The organisation of American States (OAS) adopted a legally binding international treaty in 1969 called the American convention on Human Rights. Art 13 States-

- 1) Everyone has the right to freedom of thought and expression. This right shall include freedom of work, receive and impart information and ideas, either orally, in writing, in print, in the form of art or through any other medium of one's choice.
- 2) The exercise of the right provided for in the fore going paragraph shall not be subject to prior censorship, but shall be subject to subsequent imposition of liability.

In the year 1985 in an advisory opinion, the Inter American Court of Human Rights while interpreting article 13 said,

Article 13- establishes that those, to whom the convention applies not only have the right and freedom to express their own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds.

1.4.6- European Convention on Human Rights-

The European convention on Human Rights, which was adopted on 4 November 1950. Article 10 says-

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- 1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions, and to receive and impart information and ideas without interference by public authority.
- 2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities as prescribed by law.

1.5 Right to Information Laws in other countries-

The right to information is found in the Constitution some countries and is statutes in others-

1.5.1- Constitutional Provisions-

Article 20 of the 1987 Constitution of Austria requires government bodies and corporation to provide information to citizens. There are also laws in states that require the giving of information. Article 32 of the Constitution of Belgium provides for the right to information. Article 41 of the Bulgarian Constitution also provides for the right to information. The Constitution of Columbia provide for a right of access to government records. Further Article 23 of the Constitution of Albania, Article 44 of Estonian Constitution, and section 12 of the Constitution of Finland Etc. provides for right to information.

1.5.2- Statutory Provisions-

The earliest legislation on the right to information was enacted in Sweden in year 1766. It required the disclosure of official documents upon request. The freedom of information Act is now part of the constitution of Sweden. It gives the right to information, provides exceptions and appeal against refusal to information. The United States of America passed its freedom of information Act, 1967; and it was followed by legislation in Australia; Canada and New Zealand.

1.6- Right to Information in India-

Although since early seventies the Supreme Court of India held that the right to information was included in the freedom of speech and expression guaranteed under Art 19(1)(a) of the Constitution and subsequently it recognised that right in various extents and also it comes within Article 21 of the Constitution. Fundamental Rights cannot become operative without a law lying down who can obtain information, who is liable to give information, what is procedure for **seeking** information and for giving it, what kind of

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information is immune from disclosure, to whom an appeal shall lie if the request for information is refused.

1.7- Right to Information- Popular Movement-

Colonial government was not responsible to the people. It thieved on secrecy, which was a weapon for keeping the people away. However, the government in independent India, which drew their power from 'The People of India', unfortunately continued the tradition of secrecy. The right to information was demanded as essential to peoples' grassroots demands. Transparency in administration was felt necessary. In Maharashtra, Anna Hazare, a social activist, who had practiced indigenous model of rural development in Ralegaon Siddhi, realised that development works suffered from corruption and the only way to combat it was to obtain the right to information.

1.8- Summary-

The law passed by the NDA government on the right to information was called the Freedom of Information Act, 2002. The relevant laws in the United States as well as the United Kingdom and most of the other commonwealth countries are also Freedom of Information Act. Freedom of information would have ordinarily meant that a person can get information from wherever it is available. It does not oblige the person to give information. It may at the most forbid the state from interfering with one's freedom to obtain information. It does not prevent the state from passing legislation abridging such freedom. Since the Supreme Court has held that the right to information is included within the right to freedom of speech and expression. The Constitution of India has provided rights under the title 'F.Rs' which are not mere liberties.

1.9- Glossary-

- a) Speech and expression means the propagation of one's idea.
- b) Right to Information.
- c) Human Right.

1.10- SAQS-

- 1) Describe in brief the concept of 'Speech and expression'
- 2) What are the International perspectives of Speech and expression?

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1.11- Reference-

- (a) Right to Information Act, 2005.
- (b) [https://en.wikipedia.org/wiki/Right to Information Act, 2005.](https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005)

1.12- Suggested Readings-

- (1) Right to Information Act, 2005.
- (2) Right to Information Law in India by NV Paranjape.
- (3) Right to Information by SP Sathe.

1.13- Terminal and Model Question:-

- (a) Explain with the help of Constitutional and Statutory provision regarding concept of speech and expression.
- (b) What are the Constitutional and International perspective of speech and expression?

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UNIT-2
RIGHT TO PRESS

UNIT STRUCTURE:-

- 1.1 Introduction
- 1.2 Objective
- 1.3 Judicial Response about Right to Press
 - 1.3.1 Sakal Paper (Pvt) Ltd V U09
 - 1.3.2 Bennett Coleman V. U09
- 1.4 Advertisements: Do they have the protection U/A 19(1)(a)
- 1.5 Freedom of speech and the visual and electronic media
- 1.6 Conflict between freedom of Press and Right to Information
- 1.7 Summary
- 1.8 Glossary
- 1.9 Check your Progress/SAR
- 1.10 References
- 1.11 Suggested Readings
- 1.12 Terminal and model questions.

1.1 Introduction:-

Article 19(1) of the Indian Constitution confers various rights to the citizens of India, one of which is the right to freedom of speech and expression. Clause (2) of the same Article permits the state to impose reasonable restrictions on the freedom of speech and expression. Freedom of speech and expression is guaranteed by the first Amendment of the constitution of United States, which says that Congress shall not make any law.... abridging the freedom of speech or of press, while the first Amendment gives the right to freedom of speech in absolute terms and restriction thereupon were carved out by the Supreme court of the United States through constitutional interpretation, the constitution of India gives the right in 19(1)(a) and specifies the grounds on which reasonable verifications can be imposed by law as that right in 19(2) while the 1st amendment of US constitution specifically mentions the freedom of press, Art 19(1)(a) of the Indian constitution does not mention the freedom of press but it was held that freedom of speech and expression including the freedom of Press.

1.2- Objective:-

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The press had played a significant role during the colonial rule. From Tilak to Gandhi, every leader who had mobilized the people against colonial rule had used the press as a means of informing the people and educating them with human values. Being the forth pillar of Democracy, press plays a vital role to educate the people that they could speak freely and fearlessly. The leading judgment of Supreme Court like Romesh Thaper and MSM Sharma, numbers of guidelines have been issued to express of the right to press.

1.3- Judicial Response about right to press

1.3.1 Sakal Newspapers (Pvt) Ltd v. U09 AIR 1962SC305

Fact- The validity of the Newspaper Act, 1956 and the daily by Sakal newspapers (private) limited. The impugned Act empowered the central Govt. to regulate the press of newspapers in relation to their pages and sizes and to regulate the allotment of space for advertisements and the impugned order prescribed the number of pages to be published by a newspaper corresponding to the price charged. It further limited the advertisement space that a newspaper could provide.

Object of the enactments to help the smaller and regional languages newspapers to compete with the bigger and English language newspapers with large circulations Supreme Court held that the impugned Act and order passed unconstitutional restriction of freedom of press.

Issue: A question arose whether such respecting should be seen as respecting of the freedom of business as guaranteed U/A 19(1) or respecting as freedom of press U/A 19(1) (a)?

Held: By laying emphasis on the texts of the two clauses namely clause (2) and cl (6) of Art 19, the Court brought in the 'Preferred Freedom doctrine' in Indian Constitution. Respects upon freedom of speech were to be examined with lesser presumption of constitutionality than the respecting upon freedom of trade as business without saying so. Court incorporated the doctrine of preferred freedom which was initiate by CJ stone of the US Supreme Court.

1.3.2- Bennett Coleman V. Uo9 AIR 1973SC 106 In this case Newspaper control order of 1972-73 which was issued under Essential commodity Act, 1955 and was had down following conditions upon newspaper printers-

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- (a) Ceiling of 10 pages (b) no owner who published several papers could publish an additional editor or evening paper
- (b) Advertisement space was limited it was challenged by Bennett Coleman co, which published the Times of India and various other dailies and weeklies.

The majority held that impugned order violated the freedom of press and therefore ultra vires of Art 19(1) (a). The Court however went further that the Sakal decision in holding that the impugned order did not merely violate the right of the newspapers to publish, which was inherent in the freedom of the press but also violated the right of the readers to get information which was included within their right to freedom of speech and expression.

Justice method in dissenting judgment where he held that the newspaper control order enclosed rather than abridged the freedom of press and consequently the right of the people to read said, if the right of the public to hear and be informed is also within the concept of freedom of speech the government, when it insists upon the newspapers concerned maintaining their present level of circulation does not abridge the freedom of speech but only enriches and enlarges it.

In *Indian Express Newspapers Pvt. Ltd v Uo* AIR 1956 SC 515, Supreme Court said that in today's free world freedom of the press is the heart of social and political intercourse the press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other forms of modern communications are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.

The learned judge therefore observed that such means of mass media were capable of being suppressed or manipulated to its own ends by those in power through various devices such as fiscal means, use of force, pre-censorship, interference with transit of newspapers or imposition of restrictions on the price of the newspaper etc. All the restrictions are ultimately bound to tell upon the citizen's right to obtain information. The independence of the mass media is essential for the right of the citizen to information.

1.4- Advertisements: Do they have the protection of Art 19(1) (a)-

The Supreme Court had earlier held that commercial speeches i.e. advertisement, did not get protection of 19(1)(a) commercial speeches were considered part

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of freedom to carry on trade or business guaranteed by art 19(1)(g) and were therefore subject to restrictions impugned by law in the interest of general public.

In *Hamdard Dawelkhana V Uo9 AIR1960 SC 554*, the Court held that a prohibition of advertisement which claimed magical remedies of drugs or promoted self-medication for certain diseases under Drugs and Magic Remedies (objectionable advertisements) Act, 1954 did not have to stand the test of clause (2) of art 19 since those advertisements did not come within the description of speech as protected by art 19(1)(1). The Court observed that only an advertisement which carried the expression or propagation of ideas would come under the category of speech and expression protected by Article 19(1)(a).

In *Tata Press Ltd v Maharashtra Telephone Nigam Ltd AIR 1995 SC2433* Supreme Court heard and appeal by special leave U/A 136 of the constitution filed by Tata press.

The Supreme Court observed that advertising as commercial speech had two facets. Advertising, which was no more than a commercial transaction, none the less disseminated that information regarding the product advertised. Public at large was benefited by the information made available through the advertisement.

In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by public at large without being educated by the information disseminated through advertisements. The economic system in democracy would be handicapped without there being freedom of commercial speech.

The Court referred to the decisions of the court in *Indian newspapers pvt ltd v U09 AIR 1965 SC 515*, *Sakal Papers pvt ltd v U09AIR 1962 SC 305* and *Bennett Coleman V U09 AIR 1973SC 106* which had authoritatively laid down that any restraint of advertisement would affect the fundamental right U/A 19(1)(a). Examined from other angle, the public at large had a right to receive the commercial speech. Art 19(1) (a) not only guaranteed freedom of speech and expression, it also protected the rights of an individual to listen, read and receive the said speech.

In *India v. Motion picture Association (1999) 6JCC150*, It was contended that compelled speech after known as 'must carry' provision in a statute, rule or regulation is an infringement of the right to freedom of speech unless it can be justified under cl(2) of article 19. If a 'must carry' provision further informed decision-making which is the essence of the right to free speech and expression, it will not amount to any violation of the fundamental freedom of speech & expression.

1.5- Freedom of speech and the visual and electronic media:

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The content of freedom of speech is not the same in respect of the print and the visual media, while pre-censorship of the print media is not permissible U/A 19(1) (a), pre-censorship of films and after visual **presentation** is permissible. The S.C. held in K A Abbas V U09 AIR 1971 SC 451 that pre-censorship of visual media may permissible under cl (2) as being reasonable restriction in the interest of decency and morality.

In Secretary, Ministry of Information and Broadcasting V. Cricket Association of Bengal AIR 1995 SC 1236, the Court admitted that the viewer had the right to watch the cricket match as much as the media had the right to telecast it.

1.6- Conflict between freedom of the press and the Right to Information:-

If the ambit of freedom of speech has to be determined by taking the right to information into consideration, they must be balanced very neatly so that neither of them is sacrificed in favour of ' Hans- Life Insurance Corp V. MD Shah AIR 1993 SC171 is an authority in this point.

1.7- Summary:-

By the aforesaid discussion it is clear that freedom of press in integral part of freedom of speech and expression. So far as commercial advertisement is consumed under speech of expression rather commercial advertisement fall within the ambit of freedom of trade U/A 19(1) (a) but after a course of time court has changed its view and now is of the view that even commercial advertisement is very much covered under the ambit of freedom of speech and expression.

So far as conflict between freedom of press and right to information is concerned, the Editor's freedom of the press may conflict with the reader's right to information as shown above, Can a reader insist that her article or the news in which she is interested must be published in a newspaper? The editor has right to decide what to publish and what not to publish. Only when as adverse matter is published against a person, such a person has a right to reply to it and the editor is bound to publish it. Barring such an exception, the editor's right must prevails over the reader's right to information.

1.8- Glossary:-

- (a) Speech expression, means the propagation of one's idea.
- (b) Commercial advertisement, means advertisement to educate the consumers.
- (c) Preferred freedom, means the freedom which was interoperated by SC of India in Sakal Newspapers Ltd.

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1.9- SARS:-

- (a) Explain the term 'right to Press'.
- (b) Describe in brief the concept of 'preferred freedom'.

1.10- Reference-

- (a) Right to Information Act, 2005.
- (b) [https://en.wikipedia.org/wiki/Right to Information Act, 2005.](https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005)

1.11- Suggested Readings-

- (1) Right to Information Act, 2005.
- (2) Right to Information Law in India by NV Paranjape.
- (3) Right to Information by SP sathe.

1.12- Terminal and Model Question:-

- (a) Commercial advertisement as part and partial of speech & expression.
Explain with the help of leading cases.
- (b) What is the balance between 'Right to Press' and 'Right to Information'?
Explain with the help of statutory provisions and judicial decisions.

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UNIT-3
RIGHT TO KNOW CRITERIA FOR PARTICIPATING
DEMOCRACY

Unit Structure:

- 1.1 Introduction
- 1.2 Objective
- 1.3 Right to know- Interpretation
 - 1.3.1 Relation between one individual and another.
 - 1.3.2 Relation between the individual and the state.
- 1.4 Council of Minster's Advice: Secrecy
- 1.5 Privilege to withhold documents from courts
- 1.6 Oath under the constitution
- 1.7 Whistle blowing and legal protection
- 1.8 Summary
- 1.9 Glossary
- 1.10SARS
- 1.11References
- 1.12 Suggested Readings
- 1.13Terminal Questions and Model Question

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1.1 Introduction:

Bills of rights were conceived originally by negative rights. They forbade the state from interfering with the liberties of the people the constitution of United States was framed during the eighteenth century and reflected the prevalent economic Philosophy of laissez faire and the philosophy of individualism. It was based on the concept of minimum state and therefore. It was through the liberal interpretation of those limitations upon the state by the United States Supreme Court that individual the right to legal aid and the right not be segregated against on the basis of race or colour. The freedom of information Act of US was therefore in continuation of this approach of limiting the power of state.

The constitution of India being product of the 20th century on the other hand was not based on the economic theory of laissez faire and envisioned a state that would strive to promote the welfare of the people by securing and protecting a social order based on justice social, economic and political. The right to Information is the appropriate nomenclature for the law of information because it emphasizes its positive content. The right to information not mentioned in the text of the constitution explicitly. It has been the product of the judicial interpretation of the constitution. The roots of the right to know in the common law, the statutory law and the constitution is briefly traced.

1.2 Objective:-

The objective of the Unit is to describe how the secrecy provisions and transparency provisions operated in colonial law and how over the years since coming into the force of the constitution the transparency regime evolve through legislation and the judicial process, narrowing down the scope of the secrecy provisions, This has been a journey from secrecy to transparency. We shall also describe how the right to information was situated in the common law, and the statutory law and trace how that right got expanded through judicial interpretations of the constitution.

1.3- Right to Know- Interpretation:-

1.3.1- Relation between one individual and another-

(a) Obligation to give Information

The individual includes the press or any private legal entity such as company, corporation etc.; which is not owned by stat. A person is not obliged to give information to another except when the law has placed such an obligation. Not giving information, may affect the validity of certain transactions. Such liability is implicit in the law of contract. If a

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person knowingly does not disclose something of vital nature to the contracting party, he may avoid the contract. In sale of goods Act, the seller must disclose all such faults in the sellable goods, which the buyer could not have discovered with due diligence. **Similar provision** exists in sec 55 and 108 of TP Act, 1882. Further a company must give information to its shareholders through its prospects. A society registered under the society Registration Act, must give information to its members.

(c) Privilege not to give information:-

Certain professionals, by virtue of the profession they are in, have the privilege to refrain from disclosing information about their client. A journalist enjoys the privilege not to disclose the sources of information obtained. Similarly, information provided by the patient to a Physician or by a client to lawyer or to a chartered accountant is privileged communication.

1.3.2- Relation between the individual and the state-

(a) When is an individual required to give information to the state?

Section 39 of code of criminal procedure, 1973 requires every person, aware of the commission of any offence, forthwith to give information to the nearest magistrate or police officer.

Section 8 of official Secrets Act, 1923, imposed duty to every person to give on demand, any information in his possession relating to an offence of spying under section 3.

Under section 4 read with section 14 of the prevention of Terrorism Act, 2002 any person can be compelled to give information about unauthorized possession of **arms.....**

(b) When can an individual withhold information from the state-

A person accused of an offence punishable by law can refuse to give information about the offence since the constitution provides that one cannot be compelled to give evidence against himself. Right to privacy was held by the Supreme Court part of right to life and personal liberty U/A 21 of the constitution of India.

In *Neera Mathur V LIC* (1992) ISCC 256 Supreme court held that woman applicant for jobs could not be asked to give information about their menstrual cycles in response to a questionnaire required to be filled in by such applicants, it was held to be an unconstitutional encroachment upon their right to privacy.

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(c) When is the state bound to give information to the individual?

Constitution of India U/A 22 as well as the various provision of Cr.P.C says that, no person who is arrested shall be detained in custody without being informed the ground of such arrest. Further Article 311(2) of the constitution says, No civil servant can be dismissed, removed or reduced in rank except after an inquiry in which she has been informed of the charges against her and a reasonable opportunity of being heard in respect of those charges. Fair hearing and opportunity of being heard is the test of determine arbitration and reasonableness U/A 14 & 19 respectively.

In England, such expanded concept was applied in Ridge V. Baldwin (1964) AC 40 and in India in A K Krapok V Union of India AIR 1970 SC 150. The Supreme Court has now held that the administrative authorities whose decisions are subject to appeal must give reasons for their decisions.

(d) When is the state not bound to give information to the individual?

Under the law as it existed before the coming of the Right to Information Act, 2005, the state was not liable to give information under the law the constitution expressly required it to do so. Such instances have been mentioned above. Although not giving information is the rule, there are some provision that expressly exempt the state form liability to give information. In recent years, the Supreme Court has narrowed down the scope of such state immunities through strict interpretation of the secrecy provisions.

1.4- Council of Ministers' Advice: Secrecy-

An important privilege of Parliamentary democracy is that the sovereign acts on the advice of the council of Ministers. This rule has been made applicable to the President who is head of the State at the center and the Governor who heads the State Government. The question whether any, and if so what advice was tendered by ministers to the President cannot be inquired into in any court. In S.P. Gupta V. U09 AIR 1982SC109 court's interpretation of the constitutional provisions regarding the appointment and transfers of judges of the high court's and the Supreme court Justice Bhagawiti clarified that while what advice was tendered by the council of ministers to the President could not be gone into by a court, the material and which such advice was based was not excluded from judicial review. The through judicial interpretations the court narrowed down the scope of the secrecy and facilitated transparency.

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1.5- Privilege to withhold documents from courts-

At common law crown enjoyed the privilege of withholding an evidence from the court where public interest in its disclosure served by a fair trial would be out weighted by the public interest in its suppression.

Under section 123 of Indian Evidence Act, 1872, Crown's privilege to withhold disclosure of documents was brought into the Indian law giving power to the government to withhold disclosure of documents which pertained to affairs of state if in its opinion such disclosure would jeopardize the public interest.

1.6- Oaths under the constitution-

The constitution also provides for oath of secrecy to be takes by various public fundamental. Article 75 propounds that before a minister enters upon her office, the President shall administer to her the oaths of office **and the according to the forms set out for the in the third schedules of the** constitution. The oath of secrecy in required to be taken only by ministers. Oath of allegiance to the constitution are require to be taken by various other functionaries such as the President, Vice President, Governors & Judges of Supreme Court and High Court.

1.7- Whistle Blowing and legal protection-

Whistle blowing means telling in advance of a danger arising out of scam or treachery. This may be done either by a citizen or by a person who is part of the government. We had the law to protect those who give information regarding corruption and fraud in the execution of the sate projects. Whistle blowers must be protected in the same way as accomplice are protected in criminal law.

1.8- Summary:-

Although there were many provision of law that prohibited flow of information from the state to the individual, gradual change towards transparency has been taking place. The Supreme Court has emasculated some the provisions through liberal interpretation of such laws and liberal concepts of laws stands and justifiability. Recognition of the right to information as a human right by the Supreme Court and the actual enactment of the Right to Information Act, 2005 are bound to further erode the secrecy regime. The influx of the Information technology had made further inroads into the secrecy regime. If the

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government makes greater use of information technology and embarks upon e-governance, secrecy regime is bound to diminish to the minimum. The Supreme Court through its liberal view of the locus standi has facilitated public participating in the judicial process.

1.9- Glossary-

- a) Know and information is a concept of liberal democracy.
- b) Withhold form disclosure means protected information.
- c) Secrecy regime has now very limited role.

1.10- SARS-

- a) Describe in brief the concept of 'whistle blower' and its legal protection.
- b) Explain whether advice by council of ministers are immune from disclosure.

1.11- Suggested Readings-

- 1) Right to Information Act, 2005.
- 2) Right to Information law by NV Paranjape.
- 3) Right to Information by S.P Sathe.

1.12- References-

- a) Right to Information Act, 2005
- b) [https://en.wikipedia.org/wiki/Right to Information Act, 2005.](https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005)

1.13- Terminal Question and Model Questions -

- a) Explain critically with the help of decided cases that 'right to know' is part of fundamental right.
- b) Explain the relation between individual, and between individual and state to receive information.

UNIT-4

RIGHT TO INFORMATION IN SWEDEN

4.1. INTRODUCTION

4.2. OBJECTIVES

4.3. SUBJECT

4.3.1. The Freedom of the Press Act, 1766

4.3.2. Initial purpose of the Act

4.3.3. Part of the Swedish Constitution

4.3.4. The Principle of Public Access

4.3.5. Historical Development

4.3.6. Growth of the Law

4.3.7. Local Impact of the Law in Sweden

4.3.8. Socio-political condition of Sweden prior to proclamation

4.3.9. Proclamation Period and Socio – Political Position in Sweden

4.3.10. Decline of the proclamation and its impacts

4.3.11. Position of Sweden after enforcement of the Proclamation

4.3.12. The Freedom of Press

4.3.13. Salient Features of the Freedom of Press Act

4.3.13.1. Operation

4.3.13.2. Prohibition of Censorship

4.3.13.3. Public Document

4.3.13.4. Liability under Penal Law

4.3.13.5. Presumption of Freedom

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4.3.13.6. Restrictions on the Right

4.3.13.7. Protection of the Author

4.3.13.8. Dissemination of printed matter

4.3.13.9. Violation of freedom of Press

4.3.14. Impact of Swedish Freedom of Information Act, 1766 on Other Countries of the World

4.4. SUMMARY

4.5. SAQs

4.6. REFERENCES

4.7. SUGGESTED READINGS

4.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

SUBJECT

4.1. INTRODUCTION

Many countries across the world have recognised the freedom of expression as one of the core component of the sound and healthy democracy. A vibrant and informed citizenry is the pre-requisite of any democratic society. It is not possible for any democratic government to survive without accountability and transparency. The true democracy can be acquired only when citizens have the right to access information regarding the state's actions, plans and policies. Sweden is generally seen as a benchmark for openness in government due to its long history in freedom of information. Sweden is considered to be the first country providing the right to information to its citizens for strengthening democracy. This law casts a substantial impact in Sweden as well as on other countries leading thereby to enactment of right to information laws there.

4.2. OBJECTIVE

The study of the chapter will make students understand

- the historical evolution of right to information in Sweden.
- The salient features of the law relating to right to information in Sweden.

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- Global and Local impact of the law relating to right to information passed in Sweden

4.3. SUBJECT

4.3.1. The Freedom of the Press Act, 1766

Swedish Freedom of Information Law is the oldest law relating to freedom of information in the world. It was enacted in more than two and half centuries ago in 1766. It became the first ever piece of freedom of information legislation in the modern sense. The Freedom of the Press Act, 1766 granted public access to government documents in Sweden. The Swedish Parliament called '*Sveriges Riksdag*' passed the Freedom of Press Act, 1766. This Act required that the official records and documents should be made available to anyone making request for the same on payment of the prescribed fees.

4.3.2. Initial Purpose of the Act

The Freedom of the Press Act, 1766 **gave the public power**. The initial purpose of the Act was to abolish political censorship of public documents and make sure everyone had the right to publish. It is noteworthy that the first version also included the rights to access publish documents, making Sweden the [first country in the world to officially initiate a principle of public access](#) to official records, and give citizens access to previously secret documents.

4.3.3. Part of the Swedish Constitution

This Act subsequently became an integral part of the Swedish Constitution in 1949. The Constitution of Sweden contains a provision that every citizen shall have access to virtually all the documents maintained by State or municipal agencies. It is enumerated in the Swedish Constitution that, among other things, "every Swedish subject shall have free access to official documents. In the Swedish language this is known as '*Offentlighetsprincipen*' (The Principle of Public Access) and has been considered valid since. The Constitution grants the Right to Information, meaning that even some types of secret information may be passed on to the press or to the other media without risk of criminal charges. Instead, investigation of the informer's identity is criminal offence

The Swedish Constitution is governed by four fundamental laws and one of those is the Press Act of 1766. Under the Swedish Constitution, all its citizens have the right to freely seek information, organize demonstrations, form political parties and practice their religion. The

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current version of the Act is also one of four fundamental laws which make up country's written constitution, others being The Instrument of Government, The Act of Succession and The Fundamental Law on Freedom of Expression.

4.3.4. The Principle of Public Access

The Principle of Public Access means that public has every right to unconstrained view of the activities pursued by the government and by the local authorities. It conveys that all documents handled by the authorities are public unless legislation explicitly and specifically states otherwise. Further, it signifies that each request seeking sensitive information must be handled individually, and a refusal is subject to appeal.

4.3.5. Historical Development

This law was principally driven by the parliament's interest in access to information held by the King. This Act initially came in the form of an Ordinance which afterwards became Freedom of Press Act, 1766. This law was called “His Majesty’s Gracious Ordinance Relating to Freedom of Writing and of the Press”, It was passed on December 2, 1766.

The Freedom of the Press Act abolished the censorship of all printed publications, including those imported from abroad but excluding those on academic and theological subjects. Furthermore, it guaranteed public access to documents drawn up by government agencies. However, the strong punishments for writing against the state or king were kept, though control was transferred from the public censor to the publishers.

Following the death of King Charles XII in 1718, the Swedish throne was passed to a series of weak kings. The decline of the monarchy led to an increase in the importance of the ‘Riksdag’. Though the ‘Riksdag’ retained its four chambers—for nobility, clergy, townsmen, and farmers—it developed two strong parties known as the “Hats” and the “Nightcaps.”

During the reign of King Adolf Frederick, the Nightcaps sought the liberalization of Swedish society and sparked intense political debates, which sparked several printed political pamphlets. Given that the public censor himself participated in those debates, the censorship process became inherently flawed. Influenced by Anders Chydenius, a liberal pastor and member of the Nightcaps, the Riksdag passed the Freedom of the Press Act, which abolished the censorship of most publications and granted citizens access to official documents to encourage the free exchange of ideas. There were many scholars and philosophers in both Sweden and Finland who played a very important role for the liberation of human freedom

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from monarchical and dogmatic state agencies in 18th century. Anders Chydenius who fathered the initiative of freedom of information. Anders Chydenius (1729-1803), an enlightenment thinker as well as a great politician, belonged to the Finnish city of Kokkola, played an important and fundamental role in the creating of this new law. He considered it as one of his supreme achievements. Finland was part of the Kingdom of Sweden at the time.

4.3.6. Growth of the Law

Since 1766, the Act has been thoroughly revised with latest additions come into operation in 2018. **Its early years were tough.** The Act has a complicated history, not least in its early years. It was changed around 20 times between 1767 and 1844, many of which included restrictions. In 1767, for example, it was made unlawful to criticize parliamentary debates. In 1790, it was made unlawful to write about the French revolution in periodicals, as King Gustav III began to feel nervy about events in France. Gustav's son was ultimately overthrown and in 1810 the freedoms curtailed during his father's reign were restored. One of the biggest steps for the Act came that year when the *Riksdag* abolished the censorship of academic and theological publications in 1810, which were exempt from the original Act. In 1809, a new Constitution was passed by the *Riksdag*, containing the main principles of the 1766 law. The law was again expanded in 1812 with principles of editorial responsibility and specific rules for the legal process. In 1949 the law was revised, but its main principles are still the same as in 1766. The Act was further modified in the year 1976, 1998 and 2018.

4.3.7. Local Impact of the Law in Sweden

The Freedom of Press Act has brought significant changes in the governance of the country. At this juncture, it is relevant to examine the socio-political conditions at the time of passing the Freedom of Information Act. Some of the key accomplishments of the Freedom of the Press Act, 1766 Act were the abolishment of political restriction and achievement to the public a right to access to most of the government documents.

4.3.8. Socio-political Condition of Sweden prior to Proclamation

The duration of Swedish Diet which was recognised as the so-called Age of Liberty (1719-1772) was a set example of an early experiment in parliamentarism, and this was the only one of its kind different from the English Parliament. This was the period where the power shifted from the monarch to the estates and this turns into independence of the Estates. The result of

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such independence effected the Swedish Diet by dividing into four main Estates namely nobility, clergy, burghers and peasants.

As such parliamentarism was shifted from the Monarchical Governance, all the four estates were having legislative powers and Laws were made at their assembly and with harmony of all four estates. Anders Chydenius supported the notion of the freedom including the freedom of information to the common people of the country and for achieving the same he fought throughout the life and travelled the entire Europe in searching the measures for the same. He wanted the thorough elimination of political censorship in general. It was his efforts that secured the place in the famous Freedom of the Press Act of 1766.

4.3.9. Proclamation Period and Socio – Political Position in Sweden

King of Sweden in his proclamation guaranteed the freedom of information to his subjects. He declared, *“that, having measured the great reward that flow to the public from a legalized freedom of writing and of the press, and whereas an unobstructed mutual explanation in various useful subjects not only promotes the progress and distribution of sciences and valuable crafts but also offers greater opportunities to all of our loyal subjects to gain improved understanding and appreciation of a sensibly ordered structure of government; while this freedom should also be regarded as one of the best resources of improving morality and promoting respect to the laws, when abuses and illegalities are exposed to the public through the press; We have courteously decided that the regulations issued formerly on this matter require such suitable amendment and enhancement that all ambiguity, as well as any such coerciveness as is mismatched with their intended purpose, may be removed”*.

4.3.10. Decline of the Proclamation and its Impacts

The law enacted Freedom of the Press Act of 1766 did not remain in force for long. Mostly writers guarded themselves, as the accountability and obligation were now theirs. This resulted into writing work under pseudonyms, and more serious academician become slowly to come out. Due to this the printers benefitted, Journals and political brochures prospered, political newspapers born and the very first newspaper of Sweden called Swedish daily newspapers commenced their professions. Though, on the one hand, a new political promotion was started by this Act, simultaneously, on the other hand, some restriction was also added. In general, due to the subsequent prohibition the threat of a suit of law was always considered imminent as: “no one was permitted to pen down publicly any statements either about the crowned heads or their neighbouring family members even about the ruling foreign

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powers”. The influence and the impression of this law started declining as after a couple of months from enforcing the Act, a royal announcement was made to be preventive about spreading any rumours that is untruthful or deceitful.

4.3.11. Position of Sweden after enforcement of the Proclamation

The Swedish Freedom of the Press Act, 1766 remained in force in its original formulation, merely for six years i.e. 1766-1772 only, means it was a short-lived Act. Though the aforesaid Act provided a right to anyone to write freely on any matter subject to, that the writers were personally liable for their writings, so they became cautious and started writing under pseudonyms and more serious academic writers were slow to come out. On the other hand, the printers benefitted as periodicals and political brochures prospered, political newspapers were born, and the first Swedish daily newspapers began their careers. But unfortunately, this optimistic development did not last for long; soon government started imposing restrictions on the writers as they were banned to write anything regarding spiritual or pious beliefs, constitution, the Royal family, the assembly of the realm and the estates. As this Act was initially made with the intention to provide the right of speech and expression to all the citizens, as they can speak and express their opinion before the public in any manner as they like whether it be good or bad, intelligent or foolish, but within few months from the date of commencement of this Act there imparted a royal declaration and caution about ‘spreading untruthful rumours’, which made any untruthful rumours as restricted one, though Chydenius and his numerous other fellows was of the view to use the verbal word limitless. By imposing the restriction on the spoken words created a problem of the law in a way as any spoken statements, which was restricted from being expressed, was difficult to be proved, so the main attention regarding the restriction had only been paid to the text, either handwritten or printed

4.3.12. The Freedom of Press

The freedom of the press means a freedom for each one to express, in printed writing, thoughts, opinions and feelings, and to publish public documents and otherwise provide information in any subject. The freedom of the press is understood to mean the right of every Swedish citizen to publish written matter, without prior hindrance by a public authority or other public body, and not to be prosecuted thereafter on grounds of its content other than before a lawful court, or punished therefor other than because the content contravenes an express provision of law, enacted to preserve public order without suppressing information to the public.

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4.3.13. Salient Features of the Freedom of Press Act

The law establishes press freedom, including the freedom to print and disseminate information and materials about the government, courts, and parliament. Freedom of Information implies the right to gather, transmit and publish news anywhere and everywhere without fetters.

4.3.13.1. Operation

According to the Act, everyone including companies and foreign citizens is entitled to gain access to official documents. An official document may be either text, a picture, a sound clip, a movie, a computer-readable file or any other piece of information. Like in other Nordic countries, the requester does not have to reveal his/her name, address or reason for request.

In accordance with the principles set out in paragraph one concerning freedom of the press for all, and to secure the free exchange of opinion and availability of comprehensive information, every Swedish citizen shall be free, subject to the rules contained in this Act for the protection of private rights and public safety, to express his thoughts and opinions in print, to publish official documents and to communicate information and intelligence on any subject whatsoever. All persons shall likewise be free, unless otherwise provided in this Act, to communicate information and intelligence on any subject whatsoever, for the purpose of publication in print, to an author or other person who may be deemed to be the originator of material contained in such printed matter, the editor or special editorial office, if any, of the printed matter, or an enterprise which professionally purveys news or other information to periodical publications. All persons shall furthermore have the right, unless otherwise provided in this Act, to procure information and intelligence on any subject whatsoever, for the purpose of publication in print, or in order to communicate information under the preceding paragraph.

4.3.13.2. Prohibition of Censorship

Section 8 of Chapter 1 provides that a script may not be reviewed by an authority or other public body before printing. Prohibition of printing may not occur.

Nor is it permissible for an authority or other public body, by the contents of the document, to prevent the printing or publication of a document, if the measure is not supported on that basis. The same applies to barriers to the dissemination of a writing among the public.

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4.3.13.3. Public Document

Section 4 of Chapter 2 provides that an act is general, if it is kept by an authority and according to Section 9 or 10 it is considered to have been received or made by an authority. Documents that are not considered general. Section 13 of Chapter 2 states that an act which is kept by an authority only as part of a technical processing or technical storage on behalf of someone else is not regarded as a public document by that authority. As a general document, a document held by an authority is not considered solely for being able to reproduce information that has been lost in an authority's regular system for automated processing of information

4.3.13.4. Liability under Penal Law

The Act provides that no person may be prosecuted, held liable under penal law, or held liable for damages, on account of an abuse of the freedom of the press or complicity therein, nor may the publication be confiscated or impounded other than as prescribed and, in the cases, specified in this Act.

4.3.13.5. Presumption of Freedom

Section 1 of the Chapter 2 provides that In order to promote a free exchange of opinions, a free and comprehensive information and a free artistic creation, each one shall have the right to access public documents.

4.3.13.6. Restrictions on the Right

The freedom of information is not absolute, it has some exceptions. It can be restricted in the case of one of seven exceptional circumstances mentioned in the Act itself. Among those are the possibility to restrict the right of access if restriction is necessary for national security, central fiscal policy, preventing or prosecuting a crime, and even the preservation of animals or plant species. Even then, it's not case closed: decisions to restrict access can still be appealed by a requester to the country's Parliamentary Ombudsman (Justitieombudsmannen).

Section 2 of Chapter 2 of the Act provides the restrictions with regard to right of access to official documents. These are as following:

1. The security of the National or its relations with another state or an international organisation;

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2. The central government's fiscal, monetary or currency policy;
3. The inspection, control or other supervisory activities of a public authority;
4. The interest of preventing or prosecuting crime;
5. The economic interest of the public institutions;
6. The protection of the personal or economic circumstances of private subjects;
7. The preservation of animal or plant species.

It is provided that the Government may however issue more detailed provisions for its application in a statutory instrument. These exceptions to the rule are more thoroughly examined in the Publicity and Secrecy Act 2009, which details what government agencies can keep secret, what type of document, under what circumstances, and towards whom.

If unhappy with government decision not to disclose requested information, requesters may complain to Parliamentary Ombudsman (*Justitieombudsmannen*) who will then give its verdict on the subject. Both complaints and verdicts are public documents and thus subject to the Act.

4.3.13.7. Protection of the Author

The Act also provides for the protection of the author. The author is permitted not to reveal his identity. Section 1 of Chapter 3 provides that an author of printed matter shall not be obliged to have his name, pseudonym or pen-name set out therein.

Further, Section 2 of Chapter 3 provides that it shall not be permitted to inquire into the identity of an author or a person who has communicated information in a case relating to an offence against the freedom of the press, nor shall it be permitted to inquire into the identity of the editor of non-periodical printed matter. However if, where non-periodical printed matter is concerned, the author or editor has been identified on the publication by name, or by means of a pseudonym or pen-name known generally to refer to a particular person, or if a person has acknowledged in a written statement that he is the author or editor, or has voluntarily made such a declaration before a court of law during the case, then the question of whether he is liable may be considered during the proceedings.

4.3.13.8. Dissemination of printed matter

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Section 1 of Chapter 6 states that every natural and legal person has the right to self-print or to print printed writings. It shall be the right of every Swedish citizen and Swedish legal person to sell, consign, or otherwise disseminate printed matter, either alone or with the assistance of others. However, Section 2 of Chapter 6 provides that the provisions of this Act shall not apply in cases in which a person

1. Displays a pornographic image on or at a public place through signage or other similar procedure in a manner which is intended to arouse public offense or sends without prior order.
2. Among children and youth spreads a printed text that through its content may seem treacherous or otherwise cause other danger to the young.

4.3.13.9. Violation of freedom of Press

Chapter 7 of the Act provides the actions that are violation of freedom of press. These are Unlawful threats, slander, insult, incitement, an act against the race, national, transgender identity etc., unlawful depiction of violence, Threat to civil servants, abuse of judicial process, rebellion, crime against civic freedom, high treason, inciting war, country treason or country fraud, country damaging negligence, rumour spread to the danger of national security.

4.3.14. Impact of Swedish Freedom of Information Act, 1766 on Other Countries of the World

The Swedish Freedom Press Act, 1766 had profound impact on later development and recognition of freedom of information worldwide. Both 19th and 20th centuries experienced imbibing and strengthening of democratic values and set up of governance across the world. The very reason behind acceptance of democracy is the demand of openness, transparency and accountability of the government. The other reason which steers the interest is growth of media as the fourth pillar of the state. Previously, in the absence of freedom of information legislation, some countries had included this concept in their constitution. However, most references to freedom of information are generally brief and do not provide any guidance on the scope of these rights or how they should be administered.

In the present era of modern culture, the educated people ought to express their political will for decision making power through votes and elections and for achieving the same openness and transparency must be accepted not the secrecy one. It is submitted that within six years of its existence the Act gained great interest and political significance but soon this Act removed and thereafter they were no serious reiteration of it neither in politics of Nordic states nor in American continent.

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The 20th century has been sparked by the international freedom of information movement for rising the administrative government. Inhabitants and legislatures observed for techniques to rein in bureaucratic and executive power

After US it was Norway and Denmark (1970), France and the Netherlands (1978), Australia and New Zealand (1982), and Canada (1983) and in the European Union, major steps were specially taken in the 1990s with a view to make the government more open. A major step was taken by the European Union in 2000 in the form of charter of the fundamental rights that includes not only the freedom of expression but the right of access to documents also. Following year, 2001 adopted the very first regulation on access to document. In the matter of transparency and openness at the international level the Nordic countries are considered as forerunners. Therefore, it was only logical for the Finnish Presidency of the European Union in 2006 to put special emphasis on the transparency of the European Union. There has been a great emphasis on the topic whether all the legislative process should be discussed in public. However, an effectual information policy and the access to documents are essentially very significant for any legislative process. In order to keep any government closer to its people in any democratic set up, the core issue is the openness and transparency of that government in all respect. The same principals applies to the European Union also, therefore it is one of the main priorities of Finland's EU policy during and beyond the 2006 presidency. The number of countries who have adopted freedom of information laws (FOI laws) is on the increase worldwide, according to data published in a recent UNESCO report. In 2016, 112 countries had enacted such laws that allow the general public access to data held by their respective government.

4.4. SUMMARY

Sweden's Freedom of the Press Act 1766 (Act) is generally considered as the oldest piece of freedom of information legislation in the world. The current version of the Act is also one of four fundamental laws which make up country's written constitution, others being The Instrument of Government, The Act of Succession and The Fundamental Law on Freedom of Expression. The Swedish Act had profound impacts on the freedom of information movement nationally as well as internationally.

4.5. SAQS

1. Short Answer Questions

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- a. Write short note on the initial purpose of the Swedish Freedom of Information Act.
- b. What do you understand by the Principle of Public Access under Swedish law?

2. Fill in the blanks

- a. The driving force behind the Act was....., a liberal pastor and member of the Cap Party, one of the political forces in Sweden during the mid1700s.
- b. The Swedish Freedom of Press Act was passed on.....

3. True or False

- a. The Swedish Constitution is governed by four fundamental laws and one of those is the Press Act of 1766.
- b. The Swedish Freedom of the Pres Act, 1766 remained in force in its original formulation, merely for six years i.e. 1766-1772.

4.6. REFERENCES

<https://www.ucl.ac.uk/constitution-unit/research/freedom-information-and-data-protection/international-focus/sweden>

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

A Treatise on The Right to Information Act by Dr. Anshu Jain , Universal Law Publishing Co., New Delhi, 2014.

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 Paranjape, Lexis Nexis, Gurgaon, 2014.

4.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

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- a. Write an explanatory note on the Impact of Swedish Freedom of Information Act, 1766 on Other Countries of the World.
- b. Discuss in detail the origin, historical development and growth of Right to information law in Sweden.

Answers

1. a. Refer 4.3.2. b. 4.3.4.
2. a. Anders Chydenius b. December 2, 1766
3. a. true b. true

TERMINAL QUESTIONS AND MODEL QUESTIONS

- A. refer 4.3.14. B. refer 4.3.1. to 4.3.11.

UNIT-5

RIGHT TO INFORMATION IN U.K.

5.1. INTRODUCTION

5.2. OBJECTIVES

5.3. SUBJECT

5.3.1. Historical Background

5.3.2. Principles behind the Freedom of Information Act, 2000

5.3.3. Applicability of the Act

5.3.4. Public Authorities under the Act

5.3.5. 'Information' Under the Freedom of Information Act

5.3.6. Prohibition on Disclosure

5.3.7. Obligations of Public Authorities

5.3.8. Eligibility to make a request

5.3.9. Refusal of Requests

5.3.10. Appeal against Refusal

5.3.11. Freedom of Information Act and Intellectual Property

5.3.12. Exemptions

5.3.12.1. Absolute exemptions

5.3.12.2. Qualified Exemptions

5.3.12.2.1. Class Based Exemptions

5.3.12.2.2. Harm-Based Exemptions

5.3.13. Extraordinary features

5.3.14. Criticisms of the substance of the Act

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5.4. SUMMARY

5.5. SAQS

5.6. REFERENCES

5.7. SUGGESTED READINGS

5.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

5.1. INTRODUCTION

Over the years, many countries have enacted legislations providing their citizens access to government information. This is because the concept of freedom of information is evolving as an instrument for more efficient government, and economic and technological growth. Governments around the world are providing information about their activities. As a matter of fact, many countries have adopted comprehensive freedom of information laws to facilitate access to records held by various government agencies.

The UK has also enacted the right to information law to strengthen the democracy and for better governance in the country. The [Parliament of the United Kingdom](#) passed The Freedom of Information Act in 2000. However, many of the provisions of the Act are implanted only in 2005. The Freedom of Information Act, 2005 creates a public "right of access" to information held by public authorities.

5.2. OBJECTIVE

The study of the chapter will make students understand

- the historical evolution of right to information in UK;
- the salient features and main contents of the UK Freedom of information Act, 2000;
- Significance of the law relating to right to information passed in UK.

5.3. SUBJECT

5.3.1. Historical Background

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Before passing of the freedom of information Act, 2000 in England, the focus was on secrecy rather than on transparency. It was the Official Secret Act, 1911 which governed the subject matter substantially. It sought to make everything a secret, even those matters which should not be kept secret. Under Section 2 of the Act of 1911 (now repealed by the Official Secrets Act, 1989), it was an offence punishable with up to two years imprisonment to retain without permission, or failure to take reasonable care of information obtained as a result of one's present or future employment; or to communicate information so obtained, or interested to anyone in confidence by a person holding office under Her Majesty, or obtained in contravention of the 1911 Act, to anybody other than a person to whom one is authorized to convey it or to whom it is one's duty to impart it in the interests of State; or to receive such information, knowing or having reasonable cause to believe that it has been given in contravention of the Act.

Due to existence of these several prohibitions, it could be an offence for a civil servant to pass on or for a research worker to acquire from him, information even if such information is not related to matters pertaining to security or is not classified as confidential.

In order to bring transparency in the governmental affairs, the Franks Committee recommended a repeal of Section 2 of the 1911 Act, and its replacement by the Official Information Act. The proposals restricted criminal liabilities only to specific areas of major importance. These may include disclosures of information pertaining defence, security, foreign relations, currency and reserves; cabinet documents or violating the confidentiality of information supplied to the government by or about individuals, and the use of information for private gains. Mere receipt of protected information would not be an offence under the 1911 Act, however, communication by journalists and others would still be an offence if the author or the speaker had reasonable grounds for believing that it had been conveyed to him in breach of the Act. Only classified material such as 'Top Secret' or 'Secret' or 'Defence Confidential' would be protected.

Though, this whole recommendation has not been implemented, yet in 1989 another Official Secrets Act was passed which repealed Section 2 of the 1911 Act and decriminalized much that was previous criminal. However, in other matters, it is still very restrictive.

In 1993, the Government in England published a White Paper on 'Open Government' and proposed a Voluntary Code of Practice for providing information. This Code is voluntary and thus cannot be equated to a statutory law on access to information. It provides policies and

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principles relating to disclosure of government information. The sanction behind the Code is moral and not legal. If a request for information has been refused, only then a complaint can be made to the parliamentary Ombudsman through a Member of Parliament.

The Local Government (Access to Information) Act, 1985 is perhaps the only statutory law providing a legal right to information against local governments. The 1985 Act provides for greater public access to meetings and documents of the major local councils. However, this Act leaves much to the discretion of the councils and mentions at least fifteen categories of exempted information. Further, there was no adequate legal redress for a person seeking information.

The Convention for the Protection of Human and Fundamental Rights, 1950 was an international convention providing the protection of freedom of information. Article 10 of the Convention for the Protection of Human and Fundamental Rights, 1950, provides for freedom of speech and expression. It also includes freedom to hold opinion as well as to receive and impart information and ideas. As the United Kingdom was a party to the convention, violation of any of the Article of the Convention could successfully be challenged before the European Court of Human Rights.

Further, in England, the judiciary has approved openness in government and it is achieved by the judiciary by time and again refusing the government's claim of secrecy. In 1962, by an administrative decision, the reports of the inquiry inspectors regarding planning permissions were made open to the public. In 1968, the House of Lords in *Conway v. Rimmer* established its jurisdiction to order the disclosure of any document and to hold a balance between conflicting interests of secrecy and publicity. This decision enlarged the public access to administrative information but on the other hand the Official Secrets Act, 1923 makes almost every kind of document a secret and punishes anyone who leaks them out.

In United Kingdom, There continued struggle on the part of the civil society for having law on freedom of right to information for over two decades. This could not be made possible due to the reluctance on the part of the Government of Britain. The British Government did not want to allow unrestricted access to the contents of the official documents and government records due to its conservative secrecy approach to the system of governance.

It was due to untiring efforts of Liberals that the Government had to enact the Freedom of Information Act in 2000. The Act is an implementation of the commitment made in the manifesto of the [Labour Party](#) in the [1997 general elections](#).

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5.3.2. Principles behind The Freedom of Information Act, 2000

The main principle behind freedom of information legislation is that people have a right to know about the activities of public authorities except few reasonable restrictions. The Act is also sometimes described as purpose and applicant blind. In other words, the purpose and the information of the applicant seeking information is not material.

Some other principles are as follows:

1. Right to access

This means that everybody has a right to access official information. Disclosure of information should be rule. In other words, disclosure of information should be prohibited only when it is justified and it is permitted by the Act.

2. No disclosure of reason for wanting information;

An applicant does not need to give a reason for wanting the information. On the contrary, you must justify refusing them information.

3. Equal Treatment for all applications

This law is based on the principle of equality of all applications except under special circumstances such as vexatious requests and personal data. It is immaterial who the information seeker is whether they are journalists, local residents, public authority employees, or foreign researchers.

5.3.3. Applicability of the Act

The United Kingdom being a unitary state, the Freedom of Information Act, 2000 is applicable to all British citizens residing in England, Wales, and Northern Ireland. Scotland, though an integral part of the UK has its own freedom of information law passed by the Scottish Parliament in 2002 governing the British citizens residing in Scotland. Scottish bodies are covered by the Freedom of Information (Scotland) Act 2002.

5.3.4. Public Authorities under the Act

The public authorities are only the bodies on which the Act is applicable. These authorities are contained in Schedule 1 of the Act. Some of these bodies are listed by name, such as the

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Health and Safety Executive or the National Gallery. Others are listed by type, for example government departments, or Govt. maintained schools etc.. Executive agencies are classed as part of their parent government department. Section 5 of the Act empowers the Secretary of State to designate further bodies as public authorities.

Section 3 defines the ‘Public authorities’ as anybody which, any other person who, or the holder of any office which—

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6.

(2) For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.

The public authorities in United Kingdom include all government departments, National Health Services, bureaus, boards, public sector corporations, schools, colleges, universities including legal entities like companies, and councils. The Act was sought to be amended in 2007 by a private member's bill to exempt Members of Parliament including Peers from the purview of the Act but it failed to become a law.

5.3.5. ‘Information’ Under the Freedom of Information Act

The Act covers all recorded information held by a public authority. It is not limited to official documents and it covers, for example, drafts, emails, and notes, recordings of telephone conversations and CCTV recordings. The Act includes some specific requirements to do with datasets.

Requests are sometimes made for less obvious sources of recorded information, such as the author and date of drafting, found in the properties of a document (sometimes called meta-data). This information is recorded so is covered by the Act and it must be considered for disclosure in the normal way.

Similarly, public authority should treat requests for recorded information about the handling of previous freedom of information requests (meta-requests) no differently from any other request for recorded information.

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The Act does not cover information that is in someone's head. The public authority is required to provide the information which is in recorded it is not obliged to create the information. The Act covers information that is held on behalf of a public authority even if it is not held on the authority's premises.

5.3.6. Prohibition on Disclosure

Section 44 of the Act provides disclosure of information otherwise than under this Act by the public authority holding it—

- (a) is prohibited by or under any enactment, or
- (b) is incompatible with any EU obligation, or
- (c) would constitute or be punishable as a contempt of court.

5.3.7. Obligations of Public Authorities

Under the Act, there are two main obligations of the public authorities

1. To publish certain information proactively, and
2. To respond to requests for information.

In addition, three codes of practice contain recommended good practice when applying the Act. Section 45 code of practice gives recommendations for public authorities about their handling of requests. It covers the situations in which you should give advice and assistance to those making requests; the complaints procedures you should put in place; and various considerations that may affect your relationships with other public bodies or third parties.

There is an additional section 45 code of practice on datasets. This provides guidance to public authorities on how to meet their obligations in relation to the dataset provisions of the Act.

Section 46 code of practice covers good records management practice and the obligations of public authorities under the Public Records Acts to maintain their records in an ordered and managed way, so that they can readily retrieve information when it is needed.

These codes of practice are not directly legally binding but failure to follow them is likely to lead to breaches of the Act. Section 16 requires public authority to provide applicants with reasonable advice and assistance. This includes advice and assistance to members of the public before they have made their request.

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5.3.8. Eligibility to make a request

Anyone can make a freedom of information request – they do not have to be UK citizens, or resident in the UK. Freedom of information requests can also be made by organisations, Employees of a public authority can make requests to their own employer, although good internal communications and staff relations will normally avoid the need for this.

Requesters should direct their requests for information to the public authority they think will hold the information. The public authority that receives the request is responsible for responding. Requests should not be sent to the Information Commissioner's Office (ICO), except where the requester wants information hold by the ICO.

5.3.9. Refusal of Requests

The organisation can refuse vexatious or repeated requests and those that would be disproportionately expensive to meet, but under the Act it is required to help the person as far as reasonable. Section 14 of the Act provides that A public authority is not obliged to comply with a request for information if the request is vexatious or repeated request.

A request is considered vexatious if it is 'obsessive or manifestly unreasonable', or harasses the authority or causes distress to its staff, or imposes a significant burden, or if the request lacks any serious value.

Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

5.3.10. Appeal against Refusal

Any applicant for information aggrieved by the rejection of his application may apply to the Information Commissioner, who has the power to order disclosure. However, such orders can be appealed to a specialist tribunal (the [Information Tribunal](#)) and in some circumstances the Government has the power to override orders of the Information Commissioner.

Any person can request information under the act. This includes legal entities such as companies. There is no special format for a request. Applicants do not need to mention the Act when making a request. Applicants do not have to give a reason for their request.

5.3.11. Freedom of Information Act and Intellectual Property

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The Act does not affect copyright and intellectual property rights that give owners the right to protect their original work against commercial exploitation by others. If someone wishes to re-use public sector information for commercial purposes, they should make an application under the Re-use of Public Sector Information Regulations.

5.3.12. Exemptions

The Act covers a wide range of information held by public authorities. It also contains a variety of provisions that provide for the exemption from disclosure of certain types of information. The act contains two forms of exemption. "Absolute" and qualified. Absolute exemptions are not subject to any public interest assessment, they act as absolute bars to the disclosure of information, the "qualified" exemptions are such where a public interest test must be made, balancing the public interest in maintaining the exemption against the public interest in disclosing the information.

5.3.12.1. Absolute exemptions

There are eight categories of Absolute Exemptions. Requests for information falling into anyone of them will not require the 'Public Interest' test or judgment of a public authority whether the release of the information will be in public interest or not. Such requests can be rejected, and it also relieves the authority of the duty to confirm or deny that it has the information. These are as following:

- Information that is accessible by other means (s.21)
- Information belonging to security services (s.23)
- Information contained in court records (s.32)
- Where disclosure of the information would infringe parliamentary privilege (s.34)
- Information held by the House of Commons or the House of Lords, where disclosure would prejudice the effective conduct of public affairs (s.36). (Information that is not held by the Commons or Lords falling under s.36 is subject to the public interest test)
- Information which (a) the applicant could obtain under the [Data Protection Act 1998](#); or (b) where release would breach the data protection principles. (s.40)
- Information provided in confidence (s.41)
- When disclosing the information is prohibited by an enactment; incompatible with a [European Union](#) obligation; or would commit a contempt of court (s.44)

5.3.12.2. Qualified Exemptions

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There are 17 Qualified Exemptions which are divided into two sub-classes: The Prejudice Test and the Class Test.

The 'Prejudice Test' denotes the judgment of the public authority on whether the information requested is prejudicial to the specific interests included in an exemption. The Prejudicial Test Exemptions include the country's national defence, international relations, relation within UK, the country's economic interests, law enforcement, audit functions, efficient conduct of public affairs, health and safety, and commercial interests.

The 'Class Test' means whether the information sought contains or furthers any public interest. The Class exemptions include material intended for future publication, national security, investigations and proceedings by public authorities, the formulation of government's policy, communication with the Queen, environment information, personal information, legal professional privilege, commercial information (Section 43 and 41) such as trade secrets and information relating to any private sector involvement with public authorities.

If information falls within a qualified exemption, it must be subject to a public interest test. Thus, a decision on the application of a qualified exemption operates in two stages. First, a public authority must determine whether information is covered by an exemption and then, even if it is covered, the authority must disclose the information unless the application of a public interest test indicated that the public interest favours non-disclosure.

Qualified exemptions can be sub-divided into two further categories: class-based exemptions covering information in particular class, and harm-based exemptions covering situation where disclosure of information would be liable to cause harm.

5.3.12.2.1. Class Based Exemptions

- Information intended for future publication (s.22)
- Information which does not fall within s.23(1) is exempt if required for safeguarding national security (s.24)
- Information held for purposes of investigations and proceedings conducted by public authorities (s.30)
- Information relating to the formation of government policy, ministerial communications, advice from government legal officers, and the operation of any ministerial private office (s.35)

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- Information that relates to communications with members of the Royal family, and conferring honours (s.37)
- Prevents overlap between FoI Act and regulations requiring disclosure of environmental information (s.39)
- Information covered by professional legal privilege (s.42)
- Trade secrets (s.43(1))

5.3.12.2.2. Harm-Based Exemptions

Under these exemptions the exemption applies (subject to the public interest test) if complying with the duty under s.1 would or would be likely to:

- Prejudice defence or the capability, effectiveness or security of any relevant forces (s.26)
- Prejudice international relations (s.27)
- Prejudice relations between any administration in the United Kingdom and any other such administration (s.28)
- Prejudice the economic interests of the UK (s.29)
- Prejudice law enforcement (e.g., prevention of crime or administration of justice, etc.) (s.31)
- Prejudice the auditing functions of any public authorities (s.33)
- In the reasonable opinion of a qualified person: prejudice the effective conduct of public affairs; prejudice collective responsibility; or inhibit the free and frank provision of advice or exchange of views (s.36)
- Endanger physical or mental health, or endanger the safety of the individual (s.38)
- Prejudice commercial interests (s.43(2))

An analysis of the Absolute and Qualified Exemptions of Freedom of Information Act of the United Kingdom shows that it has influenced the lawmakers in India when they enacted the Right to Information Act in 2005. The Indian legislation does not classify the exemptions into absolute and qualified exemptions, nor the qualified ones into prejudicial and class exemptions as in UK. Nevertheless, almost all exemptions mentioned in the Freedom of Information Act find their echo in the Indian law as well. There are several provisions in the Right to Information Act that empowers the CPIO/SPIO in each office to judge if public

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interest outweighs other interests in the information sought. If it does, it can release the information.

5.3.13. Extraordinary features

Three features of the UK Freedom of Information Act deserve special mention, as they differ from the position in many other countries.

1. Requests by individuals for access to their own personal information are dealt with outside the Act for most practical purposes. They are dealt with under the [Data Protection Act, 1998](#). Once it is established that the exemption for first party personal data is engaged, the Data Protection Act, 1998 becomes applicable. Although some key provisions remain applicable such as the right of complaint to the Information Commissioner.
2. Requests for information about matters concerning the environment are dealt with by the Environmental Information Regulations 2004.
3. There is no procedure whereby third parties can challenge a decision by a public authority to disclose information: for instance, if a commercial organisation provides information to a public authority, and the authority discloses that information in response to an FOI Act request, the commercial organisation has no right of appeal against that decision. By contrast, "reverse FOI" applications of this type are common in the U.S.

5.3.14. Criticisms of the substance of the Act

The UK Freedom of Information Act, 2000 is criticised on the following grounds:

- The domain of exemptions provided under the Act is wider than any other freedom of information legislation existing in a democratic state.
- The obligations to establish publication schemes were diluted as there is no duty to publish information of any specified type.
- There is a ministerial veto which undermines the Act. This has been used five times: the first time to stop publication of minutes of cabinet meetings relating to the invasion of Iraq, the second and third time by successive governments to stop publication of cabinet meetings relating to discussions regarding devolution, the fourth to stop publication of a risk register on NHS overhaul in England, and the fifth to stop publication of private letters Charles Prince of Wales sent to a number of government departments.

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The legislation has also been criticised for permitting authorities to avoid disclosing information in certain situations. One such example is that Companies owned by one public authority are generally subject to the Act but companies owned by two or more public authorities are not covered.

5.4. SUMMARY

The Freedom of Information Act, 2005 creates a public "right of access" to information held by public authorities. The main principle behind freedom of information legislation is that people have a right to know about the activities of public authorities except few reasonable restrictions. The Act contains a variety of provisions that provide for the exemption from disclosure of certain types of information. Certain features of the UK Freedom of Information Act deserve special mention, as they differ from the position in many other countries of the world. This law has also been criticised for certain drawbacks. However, there are many significant disclosures pursuant to the information sought under the Act. Some significant facts that have been brought to light by this Act include disclosure of economic benefits acquired by the Ministers and MPs in expenses for travel, Accusation of rapes, sexual assaults, child abuse and murders on Foreign diplomats, who have diplomatic immunity, while working in Britain, criminal records of Seventy-four police officers serving with the Metropolitan Police and support that UK gave to Israeli nuclear weapons program, by selling Israel 20 tonnes of heavy water in 1958.

5.5. SAQS

1. Short Answer Questions

- a. What are the Principles behind the UK Freedom of Information Act, 2000?
- b. Who can make a request for obtaining information under the UK Freedom of Information Act, 2000?

2. Fill in the blanks

- a. The Act is an implementation of the commitment made in the manifesto of the..... in the [1997 general elections](#)..
- b.of the Act provides that A public authority is not obliged to comply with a request for information if the request is vexatious or repeated request.

3. True or False

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a. Refer 5.3.1., 5.3.3. And 5.3.13.

b. refer 5.3.12.

UNIT-6

**RIGHT TO INFORMATION IN SOUTH AFRICA AND
MEXICO**

6.1. INTRODUCTION

6.2. OBJECTIVES

6.3. SUBJECT

6.3.1. Historical Growth of the right to information law in South Africa

6.3.2. Part of the Constitution of South Africa

6.3.3. Nelson Mandela's contribution

6.3.4. Object and Purpose of the Promotion of Access to Information Act, 2000

6.3.5. 'Information' under the Act

6.3.6. Personal Information

6.3.7. Right of Access

6.3.8. Refusal of Access of Information

6.3.9. Designation of Deputy Information Officers

6.3.10. Form of Requests

6.3.11. Duties of the Public Authorities

6.3.12. The Protected Disclosure Act, 2001

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6.3.14. National Information Officers Forum

6.3.15. Right to Information in Mexico

6.3.15.1. Historical Background

6.3.15.2. Right to Information under Mexican Constitution

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6.3.15.3. Growth of law

6.3.15.4. Applicability of the Act

6.3.15.5. Right of Access to Information

6.3.15.6. Refusal of Information

6.3.15.7. Transparency and Open Government Culture

6.3.15.8. Other aspects of the new freedom of information law

6.4. SUMMARY

6.5. SAQs

6.6. REFERENCES

6.7. SUGGESTED READINGS

6.8. TERMINAL QUESTIONS AND MODEL QUESTIONS

SUBJECT

6.1. INTRODUCTION

Across the globe, many countries have now recognised the right of freedom of speech and expression. Even freedom of press had well been recognised by most developed and developing countries in their Constitution. Later, the need of explicit recognition of the right to information was felt. Most of the democratic countries of the world passed such laws relating to right to information. South Africa along with Angola, Uganda and Zimbabwe is the only African country to have actually passed freedom of information legislation. The Constitution of the Republic of South Africa is unique in sense that it does not only provide the freedom of information, but also it requires in its Constitution the adoption of national legislation to give effect to this right, within three years of its coming into force. Therefore, enabling legislation, the Promotion of Access to Information Act, dealing with the right to information came into effect in March 2001. The right to access to information held in private domain, is a unique characteristic of this law, as most of the laws relating to information across the world cover only the information in the public domain. In Mexico, Right to information law is considered as one of the most strong and progressive access to information

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statues across the globe. This right has also been specifically provided under the Mexican Constitution.

6.2. OBJECTIVE

The study of this chapter will make students understand

- the historical evolution of right to information in South Africa and Mexico;
- the salient features of the law relating to right to information in South Africa and Mexico; and
- global and local impact of the law relating to right to information passed in South Africa and Mexico.

6.3. SUBJECT

6.3.1. Historical Growth of the right to information law in South Africa

The first remarkable step which created an awareness on the importance of public participation in the system of governance in African countries was Charter on Human and People's Rights, 1986. It is, sometimes, also referred to the Banjul Charter. It came into force in October 1986. Charter on Human and People's Rights, 1986 emphasised on the importance and need of recognition of human rights and greater public involvement in the workings and functioning of public bodies. Article 9 of the Charter stated that: (1) Every citizen shall have right to receive information but there was no reference to a general right to seek information; (2) Every citizen shall have the right to express and disseminate his views and opinion within the ambit of law. Thus, the Charter granted the right to receive information without, however, stating that citizen had a right to seek information.

All the African States were under mandatory obligation to enact legislation to give effect to the aforesaid provision of the Charter. The Charter, therefore, established a Commission to supervise protection of such rights provided in the Charter. The Commission on Human Rights and People's rights established under the Charter of the African Union adopted a Declaration of Principles which required that the public bodies should hold information not for their own self but as a custodian of public and every member of public shall have right to access the information. South Africa being one of the dominant state, adopted in its Constitution an express guarantee of access to information. Later, the Parliament of South Africa passed an express legislation called the Promotion of Access to information Act in

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2000 which came into effect in March 2001. It was further amended in 2002 through the Promotion of Access to Information Amendment Act, 2002.

6.3.2. Part of the Constitution of South Africa

As stated above, the Constitution of South Africa, 1996 expressly provides free access to information as a right, subject to reasonable limitations. Under Article 32 of the Constitution of South Africa, 1996 it is provided that

(1) Everyone has a right to access to:—

(a) Any information held by the state, and (b) any information held by another person, that is required for the exercise or protection of rights.

(2) National legislation must be enacted to give effect to this right which may provide for reasonable measures to alleviate the financial and administrative burden of the State.

6.3.3. Nelson Mandela's contribution

The contribution of late Nelson Mandela to the African freedom movement and struggle for basic human rights of the people is remarkable and shall always remain immemorial in the African history. He vigorously fought against colonial rule, racism and apartheid. He fought for the freedom of citizens until the very last breathe of his life. He strongly believed that mere inclusion of a provision regarding freedom of right to access information would not alone serve the purpose unless a comprehensive independent legislation is enacted in the country. In furtherance of this objective, the Parliament of South Africa enacted the Promotion of Access to Information Act, 2000 which becomes effective from March 2001.

6.3.4. Object and Purpose of the Promotion of Access to Information Act, 2000

The Preamble of the Act speaks about the purpose of the legislation. The Promotion of Access to Information Act (PAIA), 2000 gives effect to the constitutional right of access to any information held by the State and any information that is held by another person that is required for the exercise or protection of any rights. Other objects of the Act are enumerated in Section 9 of the Act. These include, among others, to bring transparency, accountability and good governance in the workings of both public and private bodies. The Act intends to promote a society where people have effective access to information for the protection of all their rights. This Act would help people to understand the functions and operation of public

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bodies, and to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

6.3.5. 'Information' under the Act

The citizens may have access to all documents and records held by any government department, its officials or any other public body. It does not matter when that information came into existence. These include the personal records held by a government department or a public body, or third party information or records provided with the permission of the relevant third party particularly documents containing confidential matter, or private information or information that is not restricted by the Promotion of Access to Information Act.

However, this Act does not apply to a record the records of Cabinet and its committees or the records relating to judicial functions of a court or information, obtained by a special tribunal established under law or by a judicial officer of such court or tribunal or held by individual member of Parliament or of a provincial legislature.

6.3.6. Personal Information

'Personal Information' under the Act means information about an identifiable individual, excluding-

- (a) information pertaining to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, fingerprints or blood type of the individual;
- (e) the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;

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(f) correspondence sent by the individual, that is of confidential nature or further correspondence disclosing the contents of the original correspondence;

(g) the views or opinions of another individual about the individual;

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual, but excludes information about an individual who has been dead for more than 20 years.

6.3.7. Right of Access

Section 11 provides that a requester must be given access to a record of a public body if he fulfils all the procedural formalities provided under the Act and where information is not as restricted information under the Act. A request includes a request for access to a record containing personal information about the requester a provision which will be put into operation by proclamation. A requester's right of access is subject to this Act. This right is not affected by any reasons the requester gives for requesting access or the information officer's belief as to what the requester's reasons are for requesting access.

6.3.8. Refusal of Access of Information

There are a number of instances in which requests for access to information may be refused. These include the following:

- when protection of a person's privacy is paramount;
- protection of commercial information relating to a third party;
- when the information is deemed confidential;
- when information is protected by the South African Revenue Service Act of 1997;
- when disclosure of information might endanger a third party or their property;
- when information involvement of implementation of the law;
- when information is being used in legal proceedings;

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- information whose disclosure endangers the security and international relations of the Republic; and
- information protecting the economic interests of South Africa.

6.3.9. Designation of Deputy Information Officers

Section 17 of the Act provides for the appointment of officer called as deputy information officers for the purposes of this Act. It requires the public body to appoint any number of officers of the public body as deputy information officers as are necessary to render the requesters its records. Such officers designated as deputy information officers will function under the supervision of the Information Officer of the public body. The information officer of a public body has direction and control over every deputy information officer of that body. The information officer of a public body may also delegate a power or duty conferred or imposed on that information officer by this Act to a deputy information officer of that public body.

6.3.10. Form of Requests

A request for access must be made in the prescribed form to the information officer of the public body concerned. The form for a request of access must at least require the requester concerned to comply with all the formalities prescribed under the Act. It is provided under the Act that if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, he is required to state that manner. If the request is made on behalf of a person, the proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the information officer has to be submitted. There exists a provision for assisting the illiterate and disable persons wishing to acquire the information. In this regard it is provided that an individual who because of illiteracy or a disability is unable to make a request for access to a record of a public body may make that request orally. The information officer of that body must reduce that oral request to writing in the prescribed form and provide a copy thereof to the requester.

6.3.11. Duties of the Public Authorities

The Promotion of Access to Information Act, 2000 casts certain obligations on the public bodies in order to achieve the desired objects of the Act. These include duty to assist requesters in order to acquire information desired by them. It is also the duty of the Information Officer or another official designated by the Information Officer to help requester

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to make the request in a form that would remove the grounds for refusal. If it is apparent on receipt of a request for access that it should have been made to another public body, the information officer of the public body concerned must render necessary assistance to enable the person to make the request, to the information officer of the appropriate public body, or transfer the request in accordance with the provisions of the Act to the concerned information officer of such public body.

6.3.12. The Protected Disclosure Act, 2001

The Protected Disclosure Act, 2001 is another supplemental law passed by the Parliament of South Africa for the purpose of better governance in the country. It came into force in February 2001. It contained exceptions enumerating the circumstances when disclosure of information may be refused by the government/public bodies and the private bodies. Another unique feature of the Protected Disclosure Act, 2001 is that it extends legal protection to whistle-blowers i.e., the persons who give or disclose information regarding corruption, wrong-doings, malpractices, illegal or criminal activities etc. in the functioning of the government agencies and/or public bodies. It prescribed a definite procedure describing how the employees of the government or the public as well as the private sectors could be protected against repression and harassment for exposing illegal or corrupt activities of employees or the authorities.

6.3.13. Role of Human Rights Commission

The Parliament of South Africa expects the Human Rights Commission to play an active role in achieving the objects of the Act. The Human Rights Commission in South Africa has a duty to increase the public understanding of this Act. It must set up educational programmes to spread awareness among the masses regarding their rights and explaining how to use them. The commission is also required to submit an annual report each year to the National Assembly stating the following for each public body:

- the number of requests for access received;
- the number of requests for access granted in full;
- the number of requests for access granted because the information is in the public interest;
- the number of requests for access refused and partially refused;
- the number of times that the period for replying to requests was extended;

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- the number of internal appeals that resulted in granting access;
- the number of internal appeals that resulted in refusing access because no reply was given to the requester;
- the number of court applications made and the outcome of these applications;
- the number of court applications made because the internal appeal procedure was regarded as being dismissed; and any other relevant matters.

6.3.14. National Information Officers Forum

In South Africa, a national organization called the Open Democracy Advice Centre is working for effective implementation of right of information law. It generates awareness among the people about their fundamental and basic rights including right to have access to information. The National Information officers Forum (NIOF) is an annual convention hosted in partnership with the Open Democracy Advice Centre and marks the International Right to Know Day in September of each year. The form has been used a means to raise awareness, facilitate responsiveness and openness through information sharing. It also strives to cultivate a culture of social justice and respect for human rights within multiple levels of government and accelerate the implementation of the Promotion of Access to Information Act, 2000.

6.3.15. Right to Information in Mexico

The law relating to information in Mexico like many countries is a major step to increase openness and to bring transparency in the country. Right to information law in Mexico is considered as one of the most strong and progressive access to information statues across the globe. The Act extends to all government bodies and regulates both the Right to Access information and the Right to Privacy. All citizens can seek information from government departments, autonomous constitutional bodies, and other government bodies at the federal level.

6.3.15.1. Historical Background

Mexico openness movement was pushed by human rights activists demanding access to official government records on past state-sponsored crimes in 70s. In 2002, a group of scholars, reporters, editors and non-governmental organisations formed an alliance called as the “*Grupo Oaxaca*” or Oaxaca Group. The objective of this group was to ensure transparency and openness by the new government. This group drafted its own information

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document and presented it before Congress on October 2001. After a series of revisions and discussions, this draft converted into a law on June 2002.

6.3.15.2. Right to Information under Mexican Constitution

In 1977, the Constitution of Mexico was amended and addressed the right to information. Article 6 of the Mexican Constitution provided for the first time right to government information. It requires state to provide access to information. A comprehensive reform of Article 6 of the Constitution was passed in the federal Congress. It established principles of transparency and provides minimum standards for access to public information at the federal, state and municipal level. Further, the Supreme Court made a number of decisions enhancing that right.

6.3.15.3. Growth of law

In 2002, the Congress unanimously approved the Federal Transparency and Access to Information Law. The Federal Transparency and Access to Information Law was signed by the President Fox in June 2002 and came into effect in June 2003. In 2015, the Mexican Congress enacted the General Transparency Law responding to organized advocacy efforts and active participation by scholars and local NGOs (including a coalition of Mexican NGOs) demanding for an enhanced and uniform access to information legislation across the country. Prior to the 2015 passage of the General Transparency Law, Mexico's 33 separate jurisdictions —31 states plus Mexico City and the federation—imposed different legal frameworks and institutional capacities on citizens and businesses, transparency.

This Law, which was elaborated in accordance to the guidelines of the 2014 constitutional amendment, is a great achievement for society. The National Institute for Transparency, Access to Information and Personal Data Protection (INAI) is consolidated as an autonomous, independent and public institution with new powers, a larger list of regulated entities and the ability to monitor the proper implementation of the constitutional mandate that stipulates that all individuals and legal entities that receive public monies must be accountable to the public in an open manner. The law permits all persons to seek information in writing from federal government departments, autonomous constitutional bodies and other government bodies. It is to be noted that

6.3.15.4. Applicability of the Act

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The Act extends to all government bodies and regulates both the Right to Access information and the Right to Privacy. All citizens can request information from government departments, autonomous constitutional bodies, and other government bodies at the federal level. All 31 Mexican states, as well as the Federal District (Mexico City) have also adopted right to information laws. The law also opened Mexico's historical archives to public scrutiny.

6.3.15.5. Right of Access to Information

Article 4 of the Act provides that the human right of access to information includes requesting, researching, disseminating, seeking and receiving information. All the information generated, obtained, acquired, processed or held by the regulated entities is public and accessible to anyone under the terms and conditions provided in this Act, in international treaties to which the Mexican State is a party, the Federal Act, the laws of the States and the regulations applicable in their respective jurisdictions. However, the Act also lays down certain information exempted from disclosure for reasons of public interest and national security.

6.3.15.6. Refusal of Information

Like, information laws of many countries, this Act also provides for certain circumstances where information cannot be disclosed. The law creates five categories of privileged information. For these categories, information can be withheld if their release will harm the public interest. These include information on national security, public security or national defence; international relations; financial, economic or monetary stability; life, security or health of any person at risk; and verification of the observance of law, prosecution of crimes, collection of taxes, immigration or strategies in pending processes.

There are an additional six categories of exempted information. These are information protected by another law that can be considered confidential or privileged, commercial secrets, preliminary findings, judicial or administrative files prior to a ruling, public servants responsibility proceedings before a ruling, and opinions in a judicial process prior to a final decision. However, in case of grave violation of human rights or crimes against humanity the information cannot be classified as protected information.

6.3.15.7. Transparency and Open Government Culture

The law establishes government bodies that will implement the new transparency rules. Each agency will form a “liaison section” to serve as an administrative office to deal with

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publishing open information and responding to citizen requests. A new “Information Committee” will supervise the agency’s openness procedures and ensure that the liaison section responds to the public properly. It will also supervise classification standards and decisions to withhold or release, and organize the agency’s documents for archiving purposes. According to Article 17, agencies must produce an index of its classified files, organized by subject matter, and publish it biannually.

To implement the law at a national level, the government is required to create a new Federal Institute for Access to Public Information. The Institute is important because it will oversee all aspects of the information process. It is provided in the Act that this institute will help establish classification criteria, provide training and technical support on how to publish their open information and respond to requests. It will also create guidelines for the management of personal information. The Institute will also assist individuals seeking information on how to find information and file requests, and hear their appeals.

Finally, it will educate citizens and public servants alike about the new right, prepare a guide on access to federal information, and produce an annual report to Congress on government responsiveness.

6.3.15.8. Other aspects of the new freedom of information law

Other aspects of the new freedom of information law include: --

Secrecy end-date: According to Article 15, the government must open its files 12 years after they were created.

Deadlines: An agency must respond to a request within twenty working days and deliver documents ten working days later.

Documents: A citizen’s request and the government’s response must themselves be public, and agencies must make the resulting documents available to all in an accessible manner.

Fees for access: Chapter V of the new law resolves the problem of fees by removing the cost of search. Only the cost of reproduction and delivery of documents is now charged. According to the law, the lack of a response will be considered acceptance of the request, setting in motion the process and deadlines normally associated with an accepted request, with the added advantage of an expedited procedure.

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Repeated request opportunities: Article 60 gives citizens renewed opportunities to challenge an agency's decision to withhold information, after one year has passed since the original decision.

6.4. SUMMARY

The conspicuous feature of South Africa information law i.e. The Promotion of Access to Information Act, 2000 is that it allows individuals and Government bodies to have access to records held by private bodies when it is necessary to enforce people's rights. The law relating to right to information in Mexico is also considered to be robust and effective one. Though the necessity of monitoring the effective implementation of the recently improved laws is felt. Otherwise, such laws will be of no avail.

6.5. SAQS

1. Short Answer Questions

- a. Write short note on the objects and purposes of the South African Promotion of Access to information Act, 2000.
- b. Discuss the Mexican Constitutional provision on right to information.

2. Fill in the blanks

- a. The Promotion of Access to information Act, 2000 came into effect in
- b. The Constitution of Mexico was amended into include a right of freedom of information.

3. True or False

- e. The Federal Institute for Access to Information (IFAI) is both the appellate body responsible for reviewing responses and an ombudsman in charge of strengthening the 'culture of transparency' in Mexican society.
- f. When information is being used in legal proceedings, it may be refused for disclosure under the South Africa's Promotion of Access to information Act, 2000.

6.6. REFERENCES

- <https://www.gov.za/services/information-government/access-information>
- <http://www.justice.gov.za/legislation/acts/2000-002.pdf>

UNIT-7

**GOOD GOVERNANCE: DEFINITION MEANING AND
CONCEPT**

STRUCTURE

7.1 INTRODUCTION

7.2 OBJECTIVES

7.3 SUBJECT

7.3.1 Defining Good governance

7.3.2 Origin of Good Governance

7.3.3 Significance of Good Governance

7.3.4 Basic Features of Good Governance

7.3.4.1 Participation

7.3.4.2 Rule of Law

7.3.4.3 Transparency

7.3.4.4 Responsiveness

7.3.4.5 Consensus oriented

7.3.4.6 Equity and inclusiveness

7.3.4.7 Accountability

7.3.4.8 Institutional Stakeholders

7.4 SUMMARY

7.5 SAQS

7.6 REFERENCES

7.7 SUGGESTED READINGS

7.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

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7.1 INTRODUCTION

These days the terms "governance", "good governance" and "bad governance" are being used quite often. Governance is the term which means the process of decision making and implementing or not implementing these decisions. The term governance applies to governance of the corporate, international, national and local or to the interactions between other sectors of society.

There are many actors involved in governance which depends on the level of government. Other actors involved in governance vary depending on the level of government that is under discussion. For example in rural areas, other actors may include influential land lords, associations of peasant farmers, cooperatives, NGOs, research institutes, religious leaders, financial institutions, political parties, the military etc.

There is a similarity in the terms- Government and governance. However the two are not the same. While "government" is a group of people who rule or run the administration of a country or it is the body of representatives that governs and controls the state at a given time. Governance, on the other hand, is the act of governing or ruling. It is the set of rules and laws framed by the government that are to be implemented through the representatives of the state. We can say that governance is what governments do.

Most of the evils within a society are attributed to bad governance. Major donors and international financial institutions are laying a lot of emphasis on "good governance". They are granting aids and loans on the condition that the beneficiary shall undertake reforms to ensure "good governance".

7.2 OBJECTIVES

After reading this unit you will be able to:

- Define good governance.
- Describe origin of good governance.
- State the significance of good governance.
- Understand basic features of good governance..

7.3 SUBJECT

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7.3.1 Defining Good governance

The term good governance includes elements like full respect of effective participation, human rights, the rule of law, multi-actor partnerships, and accountable processes, political pluralism, transparent and institutions, an efficient and effective public sector, legitimacy, access to knowledge, information and education, political empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance. It means a political unit for policy-making for the political as well as administrative units of Government.

7.3.2 Origin of good governance

The term “Good governance” was first used in a 1989 World Bank publication. In 1992, the World Bank report - Governance and Development explored further the concept of good governance. This concept was refined in 1997 by the World Bank.

The good governance in a state is assessed on the quality as well as the quantity of public goods provided to citizens. It promotes as well as sustains the complete and integrated development of human beings. It focuses on how the government enables, simplifies and authorises its people to think, analyse and take decisions which are in their best interest resulting in a clean, decent, happy, and autonomous existence. This freedom is available to every individual irrespective of caste, creed, class, and political ideology and social origin. It manages and allocates resources to respond to combined problems of its citizens.

The policies resulting in good governance are based on the principles of human rights, democratization and democracy, transparency, participation and decentralized power sharing, sound public administration, accountability, rule of law, effectiveness, equity, and strategic vision. Good governance is a must in any democracy as it fights corruption and assures the participation of people in the making of decisions that affect their lives. It makes the governments accountable.

7.3.3 Significance of good governance

Kautilya in Arthashastra propounded the qualities of good governance by the king as follows: In the happiness of his subject lies his happiness, in their welfare his welfare, whatever please himself he shall not consider good.

Good governance is important for:

- i. empowering the government to frame and implement policies and discharge its function
- ii. forming the political will.

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iii. exercising the authority for the management of economic and social resources for development.

Good governance promotes protection of human rights, gender equality, sustains the environment, enables citizens to exercise personal freedoms, and provides tools to reduce poverty, deprivation, fear, and violence. It makes the government work effective, credible and legitimate in administrative system and citizen-friendly, value caring and people-sharing.

7.3.4 Basic features of good governance

The main characteristics of good governance are participation, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and the rule of law. These elements assure the minimization of corruption, consideration of views of minorities and other vulnerable sections of society.

7.3.4.1 Participation

Informed and organised participation by every citizen, direct or indirect, is a must in good governance. The indirect participation can be through legitimate intermediate institutions or representatives. This means freedom of association and expression and an organized civil society may go hand in hand.

7.3.4.2 Rule of law

Good governance calls for the impartial enforcement of the fair legal frameworks. It requires protection of human rights of every segment of the society particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force.

7.3.4.3 Transparency

The process by which the decision taken are enforced as per the rules and regulations is known as transparency. In a transparent system, the information is freely available and directly accessible to the people who will be affected by such decisions. The information is provided in easily understandable forms and media.

7.3.4.4 Responsiveness

Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe.

7.3.4.5 Consensus oriented

The society has a large number of viewpoints. In order to bring about the development of a society, there is a need to understand the history, culture and sociology of a society or

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community. Good governance calls for the mediation of the different interests in society so that a broad consensus is formed for the betterment of the community as a whole. It also requires a broad and long-term perspective on what is needed for sustainable human development and how to achieve the goals of such development.

7.3.4.6 Equity and inclusiveness

A society is healthy when it assures each of its members that they have a stake in it and he feels that he is an integral and inseparable part of the society. This results in providing ample opportunities to all groups particularly the weaker ones to improve their life.

7.3.4.7 Effectiveness and efficiency

Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.

7.3.4.8 Accountability

Accountability is the core of good governance. Accountability is desirable not only in governmental institutions but also the private sector and civil society organizations. All must be accountable to the public.

7.3.4.9 Institutional stakeholders.

Who is accountable to whom varies depending on whether decisions or actions taken are internal or external to an organization or institution. In general an organization or an institution is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and the rule of law.

7.4 SUMMARY

From the above discussion it should be clear that good governance is an ideal which is difficult to achieve in its totality. Very few countries and societies have come close to achieving good governance in its totality. However, to ensure sustainable human development, actions must be taken to work towards this ideal with the aim of making it a reality.

7.5 SAQS

1. Short Answer Question.

a. What is the significance of Good Governance?

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b. What is meant by “good governance”?

2. Fill in the blanks

a. “In the happiness of his subject lies his happiness, in their welfare his welfare, whatever please himself he shall not consider good.” These qualities of good governance were propounded by _____.

b. The term _____ applies to governance of the corporate, international, national and local or to the interactions between other sectors of society.

3. True or False

a. Accountability is the core of good governance.

b. The process by which the decision taken are enforced as per the rules and regulations is known as transparency.

7.6 REFERENCES

Right to Information Law in India: N.V.Paranjapee

Good Governance available at https://en.wikipedia.org/wiki/Good_governance

What is Good Governance? Available at <https://www.unescap.org/sites/default/files/good-governance.pdf>

7.7 SUGGESTED READINGS

Right to Information and Protection to Whistle blowers by Krishna Pal Mallik, Allahabad Law Agency, Haryana (2016)

Right to Information Act, 2005 by [Jitesh Dhanrajani](#)

7.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

a. Explain the origin of good governance.

b. Discuss the elements of good governance.

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Answers:

SAQs

1. a. refer 7.3.4 b. refer 7.3.2
2. a. Kautilya b. Governance
3. a True b. True

TERMINAL QUESTIONS AND ANSWERS

- a. refer 7.3.3
- b. refer 7.3.5

UNIT-8

TRANSPARENCY AND ACCOUNTABILITY

STRUCTURE

8.1 INTRODUCTION

8.2 OBJECTIVES

8.3 SUBJECT

8.3.1 Meaning of Accountability

8.3.2 Types of Accountability

8.3.3 Meaning of Transparency

8.3.4 Elements of Transparency

8.3.5 Relation between Accountability and Transparency

8.3.6 Transparency in Governance

8.3.7 Accountability in Governance

8.4 SUMMARY

8.5 SAQS

8.6 REFERENCES

8.7 SUGGESTED READINGS

8.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

8.1 INTRODUCTION

Governance brings about human development. Good governance accelerates the speed of human development by ensuring effective implementation of all the activities and programmes of the States. Transparency and accountability are the main components of good governance. Accountability and transparency are related to one another. We cannot think of transparency without accountability and vice versa.

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Accountability is an important bench mark in measuring the performance of governments. Accountability is associated with preventing corruption in public life, and monitoring effectively, the fiscal responsibility of government.

8.2 OBJECTIVES

After reading this unit you will be able to:

- Define good governance.
- Describe origin of good governance.
- State the significance of good governance.
- Understand basic features of good governance...

8.3 SUBJECT

8.3.1 Meaning of Accountability

Accountability means the degree to which the government has to explain or justify its acts or omissions. It makes the leaders sensitive to the needs of the people as the people have the right to vote out a person from power at the time of elections if he has failed to live upto their expectations. Public accountability is an external control device by which public office holders and institutions are made to give documentary explanation for their actions and decisions.

The public office holders and institutions are accountable for substantives issues like policy, decision makings etc. and procedural issues like those resulting in abuse of office and power, unfairness etc.

8.3.2 Types of Accountability

Accountability comes in two dimensions: that of government officials to elected representatives; and that of the elected representatives to the citizens who elect them. It is not easy to make government officials accountable to the elected representatives. The government officials or civil servants are educated and are career oriented and ambitious. They desist decentralization for the fear of loss of power. They are generally caught in the web of corruption. Many corruption schemes provide for sharing ill-gotten gains upward through bureaucratic channels to the top.

In a democracy the final power rests with the people of the country. They choose their representatives who in turn make laws, rules, policies and programs for the electors. These

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elected representatives must work to make the life of the people more comfortable and dignified. The people on the other hand have the right to ask these representatives about the steps taken by them to solve their problems. If the people are not satisfied with the working of the elected representative, they can change him in the elections.

The term accountability can also be divided into individual accountability, managerial accountability, fiscal accountability and programme accountability.

Individual Accountability means that the person who has taken action or exercised power is answerable for the action taken or the power exercised by him. Individual accountability includes qualities like integrity, honesty, commitment and loyalty.

Managerial Accountability refers to efficiency and economy of operations. It includes sustainability of favourable outcomes, impact and benefit of outcome and modification of unfavourable outcomes.

Administrative Accountability is the responsiveness of public officials to the elected representatives and the public. Some control measures for the public officials are internal like within the administrative machinery and others are external like judiciary, media and civil society groups.

Fiscal Accountability means complete adherence to financial rules and regulations. It includes accuracy and fairness of reports, reality and legitimacy of transactions, adherence to applicable financial regulations and consistency with good accounting principles.

8.3.3 Meaning of Transparency

Transparency can be defined as the condition of clarity and absence of doubts in the conduct of and account of activities. The UNDP has perceived that transparency means "sharing information and acting in an open manner". It means that the decisions are made and implemented in accordance with the laid down rules and regulations. According to Tandon (2002), transparency means that the criteria, process and systems of decision-making are openly known to all in a public manner. The relevant information must be made available to the people to know the laid procedures have been followed. Transparency is an essential element to promote openness and reduce corruption in ensuring good governance. Transparency limits and even prevents opportunities for corrupt behaviour. Corruption has slowed the socio-economic more so in development in developing countries.

8.3.4 Elements of Transparency

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The elements of transparency are integrity, rectitudeness, decorum and leadership by examples. Integrity is used to explain situations where either the leader fulfils his promises or the Chief Executive discharges his official functions with high degree of objectivity. Integrity includes actions backed by facts, objectivity in actions, thoroughness in search and reward based on productivity. Rectitudeness is used to explain honesty or correctness of behaviour. It implies sincerity and includes veracity, probity, incorruptibility and honour.

Decorum is the situation bordering around dignity. The term decorum includes majesty, equity and self-respect. Leadership by examples the term leadership means where the leader acts in accordance with what he professes i.e. he leads by example by employing the skills of tact, industry and courtesy.

8.3.5. Relation between Accountability and Transparency:

Transparency and accountability in good governance are highly desirable because they reduce corruption, favouritism, nepotism and improves the accountability of the staff. Good governance faces a huge challenge from corruption, globalization, extremism and political intervention.

Good governance includes accountability in all its forms. It also includes transparency, equity and honesty in public office. In fact the dream of good governance can be realised by implementing the principles of accountability and transparency. For this to take place, the role of the leaders becomes very important. The ability of leadership in the governance project means the ability of the leadership to see beyond the perceptual vista of the people, appreciate their needs and motivate them to cherish and desire these needs as goals that should be achieved.

Ensuring good governance in society depends on how its leadership and people are committed to the ideals of good governance. Good governance can flourish in a society where there is peace, rule of law, accountability and transparency.

8.3.6 Transparency in Governance:

History is full of examples justifying that transparency and corruption are inversely related to each other as transparency in governance leaves lesser room for corruption. In a transparent system, the dishonest practices can be noticed easily and the wrong doer can be identified and punished accordingly.

However recent experiences depict a different story. For example in former Soviet countries the local governance institutions have become more transparent since 1990s but at the same time the corruption has increased at all levels.

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The Right To Information Act is a step towards ensuring accountability of public officials and 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.

The outstanding feature of this Act is self-disclosure of information in public domain. It is expected that if passable information is available, citizens can demand services and claim rights due to them from suitable authorities and officials. Though it has opened new horizons in good governance, there are some problems associated with the functioning of the Act. According to some studies, the status of self-disclosure is poor. In some areas like civil supply department, the self-disclosure at national level is web based. However the quality and convenience of self-disclosed information is rather poor at the district levels. The citizens face problems accessing web based information which is largely given in English.

Disclosure of information at state or national levels only, mostly in English language, and largely through only web-based tools have resulted in systematic rejection of the very same citizens in whose name and interests of right to information has been endorsed.

8.3.7 Accountability in Governance:

Accountability is crucial for good governance. It calls for clear specification of tasks to be performed, the time and budget for the completion of the task. Further it must also be specified who are responsible for the completion of the task and who would be the beneficiaries. In governance accountability is both horizontal and vertical. Horizontal accountability is the capacity of the state to check exploitation by other public agencies. The institutions like Parliament and judiciary offer horizontal accountability. Vertical accountability means when the citizens, mass media and civil society seeks to enforce standards of good governance on bureaucrats. There is another concept of society driven horizontal accountability where the citizens and civil society organisations contribute in making the system accountable. In all government agencies accountability is vertical i.e the lower ones are accountable for all their actions to their seniors in hierarchy.

8.4 SUMMARY

The democratic local governance initiatives currently under way in many countries hold much promise for developing effective systems of public accountability that will ensure that government servants are responsible to elected officials, and that the latter are in turn responsible to the public that elected them in the first place. In the process these systems of accountability should increase the pressure for more transparent local governance, in which corruption will be easier to bring to light and thus to curtail. But just as it took many decades

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for such efforts to make much headway in the industrial countries, so too quick results cannot be expected elsewhere.

8.5 SAQS

1. Short Answer Question.

- a. What are the types of accountability?
- b. What is the relation between accountability and transparency?

2. Fill in the blanks

- a. The UNDP has perceived that _____ means "sharing information and acting in an open manner".
- b. _____ Accountability means that the person who has taken action or exercised power is answerable for the action taken or the power exercised by him.

3. True or False

At The public office holders and institutions are accountable for substantives issues like policy, decision makings etc. only.

- b. Accountability and transparency are related to one another.

8.6 REFERENCES

Right to Information Law in India: N.V.Paranjapee

Important aspects of governance, transparency and accountability available at <https://www.civilserviceindia.com/subject/General-Studies/notes/important-aspects-of-governance.html>

Moses .M. Adagbahir, Accountability and Transparency: An Ideal Configuration for Good Governance available at <https://www.iiste.org/Journals/index.php/DCS/article/viewFile/27454/28168>

Accountability, Transparency and Corruption in Decentralized Governance Available at <https://www.ciesin.columbia.edu/decentralization/English/Issues/Accountability.html>
<https://www.ciesin.columbia.edu/decentralization/English/Issues/Accountability.html>

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Transparency and Accountability available at
http://indiagovernance.gov.in/transparency_and_accountability.php

8.7 SUGGESTED READINGS

Right to Information and Protection to Whistle blowers by Krishna Pal Mallik, Allahabad Law Agency, Haryana (2016)

Right to Information Act, 2005 by [Jitesh Dhanrajani](#)

8.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

- a. Explain the elements of transparency
- b. Discuss the role of accountability and transparency in good governance.

Answers:

SAQs

1. a. refer 8.3.2 b. refer 8.3.4
2. a. Transparency b. Individual
3. a. False b. True

TERMINAL QUESTIONS AND ANSWERS

- a. refer 8.3.4
- b. refer 8.3.6 and 8.3.7

UNIT: 9

ROLE OF RTI IN REALIZING THE GOAL OF GOOD GOVERNANCE AND TRANSPARENCY

STRUCTURE

9.1. INTRODUCTION

9.2 OBJECTIVES

9.3 STRUCTURE

9.3.1 Relation between RTI and Good Governance

9.3.2 Greater Transparency

9.3.3 Greater Partnership between Citizen-Government

9.3.4 Greater Accountability

9.3.5 Reduction in Corruption.

9.4. SUMMARY

9.5 SAQS

9.6 REFERENCES

9.7 SUGGESTED READING

9.8 TERMINAL QUESTIONS AND MODEL ANSWERS

9.1. INTRODUCTION

“We live in an age of information, in which the free flow of information and ideas determines the pace of development and wellbeing of the people. The implementation of RTI Act is, therefore, an important milestone in our quest for building an enlightened and at the same time, a prosperous society. Therefore, the exercise of the Right to Information cannot be the privilege of only a few.” said Dr. Manmohan Singh, the then Prime Minister of India. Information Regime is promotes participatory development, strengthens democratic governance and facilitates effective delivery of socio-economic services. In the age of information technology, information and knowledge influence the decision making process at all levels. Information helps people to become empowered, know and exercise their rights

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and thus have a good quality of life. In today's world most of the societies have democratized knowledge. The information is freely available to the commoners without them having to ask for it. The role played by media, radio, internet etc in disseminating the knowledge and information is appreciable. This enables the people to make appropriate and informed choices when they participate in democratic process. The people have gained immense knowledge and information about farming, health care, literacy, sanitation, consumer rights etc as a result of communication technologies.

Until 2005, the ordinary citizens could not easily access the information held by a public authority even where they were made beneficiaries by law like in subsidized services as food security, basic education and health care, old age pension and guaranteed minimum wages.

Though the Constitution of India guaranteed the freedom of expression and speech under Article 19, a citizen did not have any legal right to get information from public authorities on the policies, plans and rules affecting his day to day activities. The common man was not aware about the policies framed for him, so could not provide any input for improving or modifying them.

The Official Secret Act, 1923, a law formed by the British to keep their nefarious designs away from public domain, was used, even after independence, to keep basic information away from the reach of the common man. The unmindful and excessive use of this law resulted in wide scale corruption in the public life. The public authorities diverted the tax payer's money from development projects to private use. Thus the elector could not know and analyse the development made by the politician he voted for. The inefficiency of government was cleverly concealed by the public authorities increasing poverty in all its imaginable forms.

Alarmed by ever increasing poverty, decreasing nutritional levels of populace particularly women and children, low health and educational facilities, the people including the NGOs raised voice for a greater access to the information held by the public authorities. The government in 2005 formed the Right to Information Act 2005 to bring about transparency and accountability in the working of public authorities. This was thought to bring down the scale of corruption and gradually weed out this monster from the public life of the country.

9.2 OBJECTIVES

After reading this unit you will be able to:

- Understand the evolution of law on information
- Analyse the relation between RTI and good governance
- Evaluate role of RTI to bring greater transparency in governance
- Know the participation between citizen and government

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- Understand the relation between good governance and greater accountability
- Critically examine the effect of RTI on corruption

9.3 SUBJECT

9.3.1 Relation between RTI and Good Governance

The RTI Act was implemented on 12 October 2005 replacing Freedom of Information Act 2002. The RTI Act was enacted with the objective of “setting out the practical regime of right to information for 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.” Also 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.

Dr Manmohan Singh, the then Prime Minister of India, on 11 May 2005, said as follows: I believe that the passage of this Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which will ensure that benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man’s concern to the heart of all processes of governance, an era which will truly fulfill the hopes of the founding fathers of our Republic.

The Act emphasizes on good governance which can be achieved by informed citizenry for encouraging people’s participation in development process, transparency, accountability and reduction in corruption. Thus, the major objectives of the Act are: i) Greater Transparency in functioning of public authorities; ii) Informed citizenry for promotion of partnership between citizens and the Government in decision making process; iii) Improvement in accountability and performance of the Government; and iv) Reduction in corruption in the Government departments.

9.3.2 Greater Transparency

The Act makes it mandatory for every public authority to ‘maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act’. Thus the public authorities have to disclose pro-actively through publication of relevant documents in any form including electronic form. The public authorities are further required 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 the use of this Act to obtain information’ and to “provide reasons for its administrative or quasi-judicial decisions to the affected persons”.

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These provisions have resulted in putting all records in public domain by the Central Government, State Government as well as local bodies in English, Hindi or regional language. The information is put in public domain through publication including electronic versions of information. Section 2(j) of the RTI Act provided that the citizen has a right to : (i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of the documents or records; (iii) taking certified sample of material; and iv) obtaining information in electronic form, if available.

In the cases where the information sought for are not provided within the stipulated period of 30 days or the information furnished are incomplete, misleading or incorrect, a requester may complain to or appeal before the Information Commission, for issuing necessary directions. Section 20(1) empowers the Information Commission to impose penalty and/or to recommend disciplinary action against the information if held responsible for obstructing the free flow of information. The Commission may also award compensation to the requester if he suffers adversely due to non-availability of information or misinformation. The information commissions have fined a large number of public information officers for violating the provisions of the Act.

The success of the Act can be gauged from the fact that the number of RTI applications have steadily increased over the years. Generally the information is provided by the public information officers. But at times the information can be withheld under section 8(1) of the RTI on the grounds of national interest, personal or third party information or those pertaining to commercial confidence, the disclosure of which would affect competitiveness of public authorities.

9.3.3 Promotion of Citizen-Government Partnerships

The RTI Act provides a framework for promoting greater partnership of governments and citizens for formulating the policies to bring about development and also implement them effectively so as to improve the overall quality of life of the commoners.

The principle of partnership is derived from the fact that people are not only the ultimate beneficiaries of development, but also the agents of change. The stakeholders' participation leads to better projects and more dynamic development. Under the RTI regime, citizens' participation has been promoted through (a) access to information and involvement of affected groups/communities in design and implementation of projects; and (b) empowerment of local government bodies at village level through the involvement and cooperation with NGOs/self-help groups. The pro-active disclosure of information has enabled the beneficiaries, mainly through NGOs, to assume a central role in design and execution of projects. RTI has instilled a wider sense of ownership in the development activities. Besides, access to information has enabled the people to participate in economic and political

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processes through a dialogue between people and the government officials or public campaign on public policies. For instance, information obtained under RTI, in respect of utilization of funds allocated under various welfare schemes, have been used by NGOs and media to create awareness among the masses about the contributions of the political leaders, which have had desirable impact on the outcome of democratic process. Therefore, almost all the welfare projects, particularly at the States and Village levels, are being designed and developed in cooperation and support with the NGOs or affected persons, with a view to raising the satisfaction level of people. A high degree of participation by the people in realizing the assured entitlements is unprecedented in the economic history of India. This is corroborated by the fact that rural to urban migration is, for the first time, showing the sign of deceleration.

9.3.4 Greater Accountability

The RTI Act empowers the people to ask for information not protected under section 8, as a matter of right. The government is accountable to the people. This means people can question the government as to why certain decisions have been taken and what are the anticipated outcomes. Thus the government is bound to be reasoned in all its decisions. Arbitrariness in any form is unacceptable in good governance. Section 4(1) (d) of the RTI Act makes it obligatory for every public authority 'to provide reasons for its administrative or quasi-judicial decisions to the affected persons'.

However before 2005 it was almost impossible for the common man to get the details of the decision making process. This means that it was an age of darkness where people were unaware of what was going behind the closed doors of bureaucracy. Thus the programs, policies etc framed by the government were implemented but in an ineffective manner. But after 2005, the information regime has created an environment enabling better understanding of the working of the government. This has resulted in better understanding of government policies, better implementation and effective monitoring and evaluation by the stakeholders.

Proactive disclosure of information has improved the quality of decision making by the public authorities especially in programmes for poverty alleviation, and infrastructure development. The mis-match between the planned targets and actual realization is decreasing.

Earlier the poverty alleviation and empowerment programmes were implemented but with little success. With empowered citizens and free flow of information, there is significant quantitative and qualitative improvement in the delivery of services. For example the disclosure of attendance of staff in schools and primary health centres has helped check the delivery of quality education and health services respectively.

9.3.5 Reduction in Corruption

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The culture of secrecy breeds corruption among public officials. The power is misused and funds are diverted for personal gains. The result is that the tax payers' hard earned money is wasted. Some years ago there was a common practice of absenteeism among teachers and doctors. The subsidized food grain was denied to ration card holders even under PDS system. This indirectly promoted poverty and denied basic fundamental right to life to the less privileged section of society. Such a condition creates mistrust among the ruler and the ruled and, may, at times be exploited by anti-social and anti-national elements to further their dangerous motives. The RTI Act is a weapon in the hands of people to get information on what services are they entitled to and why are they being denied. This brings about transparency in the working of the government, makes government officials accountable and eventually reduces corruption.

9.4 SUMMARY

In any democratic country, people elect the political representatives who they think will understand their problems and take remedial measures to improve their plight. These people, the masses have a right to know what efforts these politicians have made to change their life for better. The democracy allows the people to vote out of power those who have failed to live up to their expectations and perform. Thus it becomes all the more important that the people get the information on matters affecting them so that they can analyse the policies and programs of government and their implementation. This calls for a greater transparency and greater accountability in the public life. The change in governance in India was ushered in, in 2005 when the Indian Parliament enacted and implemented the Right to Information Act with the objective of making the governance transparent, public officials accountable and people knowledgeable. The positive effect of the Act is visible in areas big poverty alleviation, health services and eradication of illiteracy. The democratization of information has improved the quality of life of people and also created opportunities for betterment of the policies and programs. This had improved the quality of life of people.

However at times the RTI activists have been killed when they have tried to expose malpractices. Also some people have tried to misuse the law on information for settling personal scores. There have been instances where people ask for information just as a pressure tactics. On the whole we can say that the law on information has brought life into Indian democracy. It is a step towards good governance and a leap towards a better society.

9.5 SAQS

1 Short Answer Questions

- a. Write a note on the effect of RTI on transparency.
- b. The RTI Act provides a framework for promoting greater partnership of governments.

Comment

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2 Fill in the blanks

- a. Section 4(1) (d) if the RTI Act makes it obligatory for every public authority 'to provide reasons for its administrative or quasi-judicial decisions to the affected persons'.
- b. Section 20(1) empowers the Information Commission to impose penalty and/or to recommend disciplinary action against the information if held responsible for obstructing the free flow of information.

3 True or False

- a. Section 2(j) of the RTI Act provided that the citizen has a right to: (i) inspection of work, documents, and records.
- b. The Official Secret Act, 1923, a law formed by the British.

9.6 REFERENCES

M. M. Ansari, Right to Information and its Relationship to Good Governance and Development,

<https://pdfs.semanticscholar.org/1a50/bf12f0bf13c121419599c9092308757e926d.pdf>

9.7 SUGGESTED READING

Right to Information and Protection to Whistle Blowers by Krishna Pal Malik Allahabad Law Agency (2016)

9.8 TERMINAL QUESTIONS WITH MODEL ANSWERS

- a. How has RTI helped in realising the goal of good governance?
- b. Accountability and transparency have increased after the implementation of RTI Act in 2005. Explain.

MODEL ANSWERS

1 Short Answer Questions

- a. Refer 9.3.2

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b. Refer 9.3.3

2 Fill in the blanks

a. 4(1)(d)

b. 20(1)

3 True or False

a. True

b. True

TERMINAL QUESTIONS

a. Refer 9.3.1

b. Refer 9.3.2 and 9.3.4

UNIT-10

IMPORTANT DISCLOSURES THROUGH RTI

UNIT STRUCTURE:

10.1 OBJECTIVES

10.2 SUBJECT:

10.2.1 CASE STUDY-1

10.2.2 CASE STUDY-2

10.2.3 CASE STUDY-3

10.2.4 CASE STUDY-4

10.3 REFERENCES

10.4 SUGGESTED READINGS

10.1 Objectives:

After reading this Unit you will be able to know about the success stories of RTI

10.2 Subject:

10.2.1 case study-1 Karnataka Villagers insist on Right to Food

People in Rural Karnataka have combined the campaigns for the Right to Information and the Right to Food to fight hunger. Poor villagers have successfully participated in social audits and public hearings to demand that the rations due to them are allotted to them at the correct prices.

"They were not giving us our monthly rations. We complained, and the officials invited us for a meeting. Now we get rice at Rs 3 wheat at Rs 2 a kg," says Chandramma, a member of the self-help group in the Chennagiri Village. "There are nine programmes of food security, but people did not know about them. We staged street theatres and conducted public hearings to spread awareness," says K B Roopa Naik, Channagiri Taluka, Davangere.

Positive fallout of the public hearing has been the marked improvement in the quality of food grains which is now being supplied in the villages."After a week of public hearing the people got ration cards and new ration shops were opened," says N M Muthappa, Right to Food

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Campaign, Karnataka. "For the first time women were confident enough to ask why they were not being given rice and wheat at the correct price. This movement must spread to every village and every taluka," says Seetamma, President of the self-help group in Davangere. It can now be hoped that the new tools of empowerment will enable the people to ask tough questions and demand answers as well as action.

10.2.2 case study-2 Grandfather's death certificate through RTI

For about two years, Suvarana Bhagyawant made rounds of the panchayat office to get her grandfather's death certificate. Every time, the official there would tell her to come later or pay a bribe of Rs 500 to get the work done.

Suvarana, a resident of the Ambhegaon village, needed the certificate so that her grandmother could apply for the widow pension scheme. Finally, Suvarana filed a query under the Right to Information (RTI) Act. She got the certificate within eight days.

"This piece of paper is like a weapon for the powerless to fight against corrupt establishment," says Suvarana, pointing to an RTI application. For the villagers of Ambhegaon, the RTI Act has come as long-awaited rain in a drought-prone area.

Today, we tell the officials that if they do not look at our problems, we will file an RTI query," says Archana Bhagyawant. She was forced to file an RTI query after the officer demanded a bribe of Rs 150 for the issuance of a new ration card. "I waited for a year and finally when I filed an RTI query, I got it within three weeks. The sarpanch personally delivered it at my home," said Archana.

Suvarana and Archana are part of a unique initiative begun by the Public Concern for Governance Trust (PCGT)-in partnership with the Bahujan Hitay Trust-that aims to improve the quality of lives in villages in Kalyan by using RTI.

10.2.3 case study-3 Better Road for Bagepalli

Bagepalli is a small town 100kms north of Bangalore with tree lined, tarmac roads. That was until one day, the government officials thought Bagepalli would be better off with double roads & street lights. Road works began in March 2005. Markings were done unprofessionally; dividers were built even before the roads were made making traffic movement haphazard, causing many accidents and deaths. Thankfully for Bagepalli in November, Sakshi Trust presented an RTI workshop that Toufeeq a staffer from ADATS (An

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NGO), had attended. Towfeeq then used RTI to find out the real story of Bagepalli's roads. He says, "Nearly Rs 1.32 crores were sanctioned for the road but no work was done. Of this 1.32 crores, 1.15 crores was shown as spent in response to my RTI application. WE finally went and confronted the JE with the information he had and he apologized and promised to fix the road. Thanks to RTI the road work is finally being completed." Toufeeq is now a RTI trainer and conducts RTI training in vernacular languages like Kannada and Telugu.

10.2.4 case study-4 Poor quality material used to construct Dam

The agriculture department official told Banabai Kumre that nothing would come of her complaint of corruption, because he had already paid hush money to the district collector and the chief minister. So the septuagenarian did what she thought was best: she went to Mumbai and asked the Maharashtra's chief minister if he had received a cut on the check dam on her land.

Banabai hails from village Kharula in Maharashtra's Yavatmal district. Banabai's family of six barely managed to make ends meet. Though her extended family of more than 20 owned a farm as big as 10 hectares, only parts of it were cultivable where they grew jowar, pulses and paddy. But their routine was upset in early June this year when a check dam flooded after a spell of heavy rains. The rushing waters destroyed the seedlings on Banabai's land. The dam was not very old. It was constructed barely a year ago. Banabai decided to report the matter to the agriculture department's office at Yavatmal tehsil. After all Rs 3 lakh was spent under the prime minister's relief package for constructing the dam.

An inspection team of the department visited the site on June 16, 2008. It confirmed Banabai's allegations that inferior quality material was used to construct the dam. Fearing consequences, the supervisor with the agriculture department, who was involved with the construction of the dam, went to Banabai's house and unleashed a volley of threats. He accused her of breaking the dam and told her that he had "fixed" all higher ups. Unfazed, Banabai filed a second complaint with the district collector, mentioning the supervisor's threats and demanded that the official be suspended. She alleged that only Rs 1 lakh had been spent on the dam, instead of the officially sanctioned Rs 3 lakh. She also alleged that instead of black soil, murum (a local variety of thick gravel) was used to construct the dam. But there was no action. So Banabai went back to the collector's office on July 1, and asked him directly, "Tumhi paise khalle ka (did you take a bribe)?" The collector was initially speechless. But within moments his team was in a hustle. An inspection team was dispatched immediately to the check dam site. The memory of that day is precious to Banabai. "The inspection team and I had to travel

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by the collector's own 'lal divyachi gadi' (official vehicle with a red lamp), because there was no other vehicle at the collectorate at that time," she says with a smile.

The team's findings confirmed Banabai's allegations. With media support, Yavatmal district's panchayat Samiti resolution supporting Banabai's demand and intervention of the Chief Minister, action was taken against the supervisor¹.

10.3 REFERENCES

- a) website of Uttarakhand State Commission.
- b) uic.gov.in/howtoapply/filing.pdf
- c) <https://righttoinformation.wiki/guide/applicant/second-appeal/cic>
- d) <http://rtiact2005.com/second-appeal-under-rti/>
- e) <https://righttoinformation.wiki/guide/applicant/first-appeal/faa>

10.4 SUGGESTED READINGS

1. Dr. Neelam Kant, 2014, published by Orient Publishing Company.
2. The Right to Information Act, 2005.

¹ Source: <http://vikaspedia.in/e-governance/about-rti-act-2005/rti-news-update>

UNIT-11

IMPORTANT DISCLOSURES THROUGH RTI

UNIT STRUCTURE:

11.1 OBJECTIVES

11.2 SUBJECT:

11.2.1 CASE STUDY-1

11.2.2 CASE STUDY-2

11.2.3 CASE STUDY-3

11.2.4 CASE STUDY-4

11.3 REFERENCES

11.4 SUGGESTED READINGS

11.1 Objectives: After reading this Unit you will be able to know about the success stories of RTI

11.3 Subject:

11.3.1 Case Study-1 Rajasthan villagers use RTI to end woes

Besides losing dealership, the ration shopkeeper was also forced to pay poor families in the village over Rs Four lakh, the cash equivalent of the grains he had sold illegally. Revat Ram and his friends used the Act to get all records of their ration shop in Himmatsar village and by exposing how grains meant for the poor were being black-marketed at a ration shop in Bikaner district.

After the move the villagers got the dealer removed. ‘‘Earlier we used to be afraid that if we speak against the Sarpanch, he will not give us jobs under drought relief. But now we feel bolder and think that through the new law we can put an end to his frauds,’’ said a local resident. And now it seems people across Rajasthan are keen to use their information rights. Bunglings have led to 15 sarpanches being removed and a dozen officials suspended.

11.3.2 Case Study-2 Voices raised over the issue of overcrowding of jails through RTI

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UP jails are overcrowded. Jails in the state lodge prisoners far more in number than they can accommodate comfortably. What makes it a case of human rights violation is that more than half of the prisoners in the different jails of the state are under trials? Out of 81,027 prisoners lodged in various jails of the state, 55,460 (more than 60%) are under trials. Many of them have been behind bars for much more number of years than what the punishment for their offence would have allowed.

The response to an RTI query by national working committee member, NCPRI, Raja John Bunch, by IG (prisons) showed that the total number of prisoners lodged in state jails is more than the maximum population of prisoners that each of the jail can support. In March 2013, the Supreme Court (SC) issued a notice to the Centre and all states giving them five weeks' time to respond to a PIL which said that 64.7% of the total prison population of the country comprises of under trials. There are about 2.41 lakh under trials in Indian prisons. SC issued the notice to the National Crime Records Bureau (NCRB) as well and 'urged it to intervene and direct government to frame a policy to grant bail to prisoners facing trial for offences in which punishment ranges between three and seven years.'

11.3.3 Case Study-3 Official fined Rs 18,000 under Right to Information Act

In the second incident of penalizing an erring officer under the Right to Information Act in Madhya Pradesh, Chief Information Commissioner (CIC) T N Shrivastava fined Morena District Woman and Child Development Officer (DWCDO) Sajjan Aluna for failing to provide information sought under the Act within the time limit and not abiding by the appellate officer's order. The CIC imposed the fine of Rs 18,000 after not being satisfied with the explanation given by Mrs. Aluna, who was earlier given show cause notice on the second appeal by Mr. Balwant Singh Haihayavanshi, who had sought certain information from the department on December 31, 2005. The Act came into force on October 12, 2005.

The DWCDO rejected the application on the ground that the applicant had been suspended after preliminary inquiry. On an appeal, the Morena District Collector directed the DWCDO to provide copies of the document on payment as the applicant had not sought any confidential document. After dillydallying on one pretext or the other, the DWCDO allowed the applicant to deposit Rs 1200 to provide copies of the documents. The second appeal was made as the required documents were not supplied.

The Chief Information Commissioner found Mrs Aluna's conduct as "unfortunate" and directed to provide the required documents within seven days. A fortnight ago, Tahsildar R S

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Chouhan of Gyaspur in Vidisha district was fined Rs 25,000 for refusing to provide copies of land transfer deed to an applicant under the Right to Information Act.

11.3.4 Case Study-4 Chandigarh became the first smoke free city in India

In 2007, Chandigarh became the first smoke free city in India, which meant banning smoke in indoor spaces as well as prohibiting it in outdoor public places like's parks and markets. But Hemant Ghosh didn't expect his RTI applications to lead to such a landmark decision, which would influence other cities to enforce smoke-free laws in the years to come. His work is widely regarded as the trigger for the campaign to create awareness about the hazards of smoking, involving public service messages on television and cinemas, which has grown over the years. Soon after the Act came into force, Ghosh inundated the governments of Punjab and Haryana with over 300 queries on how The 2003 Cigarettes and Other Tobacco Products Act (COTPA), which sets out provisions to address smoking in public places, was being implemented in their shared capital.

According to the 2003 law, his application asked whether the No Smoking Area Smoking here is an offence warning was displayed in offices and premises under government control."In 2007, 1,800 "warning boards" appeared in all government departments, police stations, hospitals and schools.

Ghosh, who heads a Chandigarh-based NGO called Burning Brain Society, said that he was only trying to hold the government accountable. "What has been most satisfying is to see this replicated across the country," he said. Almost ten years on, however, another RTI application filed by Gaurav Bansal, a 21-year-old resident of Chandigarh, revealed that only fined 78 people were fined for smoking in public in 2013, which included 61 people in just the one area of sector 19. "Despite the claims of the administration to make the city a smoke-free one, only 78 persons were *challaned* (fined) in an entire year

11.3 REFERENCES

- a) website of Uttarakhand State Commission.
- b) uic.gov.in/howtoapply/filing.pdf
- c) <https://righttoinformation.wiki/guide/applicant/second-appeal/cic>
- d) <http://rtiact2005.com/second-appeal-under-rti/>
- e) <https://righttoinformation.wiki/guide/applicant/first-appeal/faa>

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11.4 SUGGESTED READINGS

1. Dr. Neelam Kant, 2014, published by Orient Publishing Company.
2. The Right to Information Act, 2005.

UNIT-12

OTHER IMPORTANT SUCCESS STORIES

UNIT STRUCTURE:

12.1 OBJECTIVES

12.2 SUBJECT:

12.2.1 CASE STUDY-1

12.2.2 CASE STUDY-2

12.2.3 CASE STUDY-3

12.2.4 CASE STUDY-4

12.2.4 CASE STUDY-5

12.2.4 CASE STUDY-6

12.3 REFERENCES

12.4 SUGGESTED READINGS

12.1 Objectives: After reading this Unit you will be able to know about the success stories of RTI

12.2 Subject:

12.2.1 Case Study-1 the Seven Ponds

In 2010, K.S. Sagaria smelt a rat when the paperwork showed that seven ponds had been constructed for below poverty lines families in Kushmal village of Orissa, but no one in the village could spot them. So he filed an RTI application which revealed that the ponds were never dug, the “labourers” who worked to “construct” the ponds included dead people. Following complaints, the administration suspended the officials involved in the subterfuge, and the project was renewed, but this time, the villagers vowed to keep a check on its progress.

12.2.2 Case Study-2 Scholarships for Students

While several of his classmates and their parents were fretting when they didn't receive their scholarships for the academic year of 2011-2012, nine-year-old Manoj, a student at the government primary school in Vailpoor, Nizamabad district of Telangana, filed an application. In his application directed at the Labour Welfare Department, the class 4 student

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asked why the money had not reached the students, and by when they could expect their scholarships. Manoj's RTI application secured scholarships for 10 students, who are the children of *beedi* workers.

12.2.3 Case Study-3 School Uniforms

When students of Gulrahai Primary School in Allahabad did not receive their school uniforms in December 2006, nine parents filed an RTI application questioning the administration about the missing uniforms, which led to school dresses being delivered in the first week of January, 2007. Parents of a government school in Chitrakoot, Uttar Pradesh, also procured school uniforms by filing an RTI application.

Right to Information Act 2005 is a powerful tool which helps various activists to hold government and elected responsible for their work. Usually it was seen that since years many government schemes were floated for the welfare of the commoners however ended up filling the pockets of the then ministers and bureaucrats. There was no stream to question them however everybody knew the truth lying under these frauds. Either one had to be powerful or backed by someone who is in power to rescue the commoners from these frauds. Still it would be almost impossible as it's a long channel of babu's and bureaucrats that one must follow to surface the truth. Right to Information Act, 2005 made this simple and provided the commoners with a tool to question any service rendered by the government. It just takes ten rupees to make a wrong into a right and what makes it efficient is the time bound service under this act which used to be the real blocker in all previous efforts made in this direction. For how fierce the law maybe, the related officials would take years and years to process them and when the result would come out, it would be have lost its effectiveness.

Let's consider some of the big frauds that were resolved through the power on Right to Information Act, 2005.

12.2.4 Case Study-4 the Adarsh Housing Society Scam:

With help activists Simpreet Singh and Yogacharya, this scam was exposed. The Adarsh Housing society was originally planned to be a six storey building which was structured for the war widows of 1999 Kargil war and it was astounding to see that how this converted into a 31-storey building and how various ministers and army officials created a bee line to get these houses way below the market price. It also became evident that no environmental

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clearance was taken before building this high rise building in a Coastal Regulation Zone. Some of the most prominent names which came forward during this scam were the then Union Minister Suresh Prabhu, Former Army Chief Deepak Kapoor, diplomat Devyani Khobragade and Congress Party Leader Kanhaiyalal Gidwani.

12.2.5 Case Study-5 The very famous 2G Scam:

This was the one of the top examples of misuse of Power by Indian officials which involved none other than Telecom Ministry which was led by Andimuthu Raja. This scam caused a loss of nearly two million to Indian Government. The Right to Information Act, 2005 application against this scam was file by Subhash Chandra Agarwal. This is an ultimate example of how Right to Information Act, 2005 helps re-enforce transparency and fairness working of Government officials.

Another Right to Information activist Vivek Garg received a document on his response to his application submitted under Right to Information Act, 2005 which revealed the 2G spectrum was auctions at way lower prices that it could have been.

12.2.6 Case Study-6 2010 Common Wealth Games:

This was multi-faceted scam which included many humiliations for Indian Government for below par arrangements for athletes participating in Common Wealth Games in India from all around the globe.

Just a week ahead of the commencement of the games, the accommodation at CWG village near Yamuna River was observed to be filthy and full of human waste thus making them not fit for use by Athletes.

Also, it came into light, that under "beautification" of Delhi for the Common Wealth games by creating "no-tolerance zones" led to send back many beggars and homeless citizens back to their original states.

This also came into light under the Right to Information Act, 2005 Application submitted by Housing and Land Rights Network, that almost INR 744 crore was diverted from the funds that was meant for their welfare projects towards Commonwealth Games.²

²<https://www.taxmann.com/blogpost/2000000573/some-interesting-cases-resolved-through-rti.aspx>

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12.3 REFERENCES

- a) website of Uttarakhand State Commission.
- b) uic.gov.in/howtoapply/filing.pdf
- c) <https://righttoinformation.wiki/guide/applicant/second-appeal/cic>
- d) <http://rtiact2005.com/second-appeal-under-rti/>
- e) <https://righttoinformation.wiki/guide/applicant/first-appeal/faa>

12.4 SUGGESTED READINGS

1. Dr. Neelam Kant, 2014, published by Orient Publishing Company.
2. The Right to Information Act, 2005.