CHAPTER –IV

RIGHT TO INFORMATION IN INDIA

4.1 Introduction

The Constitution of India guarantees freedom of speech and expression to all the citizens of the country vide Article 19(1.a). Article 19(2) places certain reasonable restrictions upon this freedom in the interest of certain human and professional values. The right to information is implicitly guaranteed by the Constitution but the public authorities denied access to information in the name of official secrets. The progressive individuals and organizations fought for the right to information consistently in the post-independence era. Several judicial pronouncements also upheld the fundamental right to information which is a powerful instrument of good governance. The Indian Parliament enacted the Right to Information Act, 2005 with a view to set out a practical regime for securing information in the country. It gave a powerful tool to the citizens to get information from the Government as a matter of right. This law is very comprehensive and covers almost all matters of governance and has the widest possible reach, being applicable to Government at all levels- Union, State and Local as well as recipients of government grants.

4.2 Genesis of Right to Information in India

There is a well established linkage between right to information and good governance according to empirical evidence gathered by the researchers. Studies have reported that access to information is a great enabler of transparency which refers to availability of information to the general public and clarity about functioning of government institutions. Transparency and accountability are interrelated and mutually reinforcing concepts. The existence of both conditions is a prerequisite to effective, efficient and equitable management in public institutions. Good governance requires that civil society has the opportunity to participate during the formulation of development strategies and that directly affected communities and groups should be able to participate in the design and implementation of programmes and projects.
Justice Mathew noted: “The freedom of speech protects two kinds of interests. There is an individual interest, the need of men to express their opinion on matters vital to them and a social interest in the attainment of truth so that the country may not only accept the wisest course but carry it out in the wisest way. Now in the method of political government the point of ultimate interest is not in the words of the speakers but in the hearts of the hearers”.

The National Front Government headed by V.P.Singh was committed to make right to information a fundamental right. The former Prime Minister V.P.Singh (1989) declared the attitude of the government on right to information thus: “An open system of governance is an essential prerequisite for the fullest flowering of democracy. Free flow of information from the government to the people will not only create an enlightened and informed public opinion but also render those in authority accountable. In recent past we have witnessed many distortions in our information system. The veil of secrecy was lowered many a time not in the interest of national security, but to shield the guilty, vested interests or gross errors of judgments. Therefore, the National Front Government has decided to make the Right to Information a fundamental right”.

The subject of good governance is widely recognized as an essential feature of democracy across the globe. Many nations have recognized that good governance constitutes the cornerstone of every democracy since it includes wide range of issues like economic, political, administrative and judicial as well. Scholars have noted that governance is a process or a system that ensures certain activities to be carried out, managed or controlled within the parameters of accountability, legitimacy and transparency. Good Governance rests on positive, responsive and sensitive administration which entails sound public sector management (efficiency, effectiveness and economy), accountability, exchange and free flow of information (transparency), and a legal framework for development (justice, respect for human rights and liberties), according to Overseas Development Administration (1993).

Justice Sawant, former Chairman of the Press Council (2005:167) stated that in a democracy people were the masters and those utilizing public resources and exercising public power are their agents. The Working Group on Right to Information (1997) headed by H.D.Shouri submitted the comprehensive report and
draft bill on Freedom of Information on 24 May 1997. The Freedom of Information Bill, 2000 was passed in December 2002 and received Presidential assent on January 2003, as the Freedom of Information Act, 2002. The National Advisory Council suggested certain important changes to be incorporated in the Act to ensure greater access to information and transparency in governance.

The important changes proposed to be incorporated, inter alia, include establishment of appellate machinery with investigating powers to review decisions of the Public Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions and aspirations of progressive thinkers. In view of the significant changes proposed by the National Advisory Council, suggestions of jurists and lobbying of activists, the Government of India decided to repeal the Freedom of Information Act, 2002 and enact another comprehensive law for effectuating the right to information in accordance with the provisions of Article 19 of the Constitution of India.

The UPA government came to power at the center in May 2004 and promised that RTI would be made more progressive, participatory and meaningful. The National Advisory council (NAC) was set up to see the implementation of the common minimum programme. In July 2004 the Supreme Court in a public interest litigation case pursued by Prashant Bhushan on behalf of NCPRI set a deadline of September 15, 2004 for the central government to issue notification on right to information. The government had consulted the legal luminaries and activists including Aruna Roy and tabled the RTI Act in Parliament. The RTI amendment act was approved by the Parliament quickly. The President of India gave his assent to the RTI Act 2005. Thus, the act came into force on October 12, 2005.

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, says the preamble of the Indian Right to Information (RTI) Act. The act provides effective access to information for citizens of India, which is under the control of the public authorities. It promotes transparency and accountability in the working of every public authority. India being democratic Nation securing the liberty, freedom and
rights of its citizen under the Constitution of India, the Central Government had enacted Right to Information Act, 2005 for promoting transparency and accountability in the working of the Public Authority.

Singh (2007:178) notes: “The barriers of administrative and political corruption should be tackled by the upcoming bureaucrats and quality of governance be improved at all levels to build an India ‘worthy of our dreams’. If there are barriers, there are barriers in our country, in our good governance, in our governance processes. It is a fact [that] there is lot of corruption, both at the political level and at the administrative level. Right to Information Act is a tool to strengthen good governance and tackle corruption which is the biggest challenge for development.

The Right to Information Act is duly acknowledged as one of the world’s best law with an excellent implementation track record. It is one of the most empowering and most progressive legislations passed in the post Independent India. From the day the Act came into force, enlightened citizenry had stated using the law by making information requests in order get the police to act or get their entitlements of food grain under public distribution system or expose the corrupt officials. Most radical provision of the Act is that the information seekers need not to give any reason for it or prove his locus stand.

4.3 Salient Features of Right to Information Act, 2005

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government. The Right to Information Act, 2005 includes primarily 6 chapters namely – preliminary, right to information and obligations of public authorities, the central information commission, the state information commission, powers and functions of the information commissions, appeal and penalties; and miscellaneous.
4.3.1 Preliminary

The Act is called as the Right to Information Act, 2005 which extends to the whole of India except the State of Jammu and Kashmir. It has certain provisions which came into force on June 15, 2005. It includes certain definitions which are as follows.

**Appropriate Government** means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the central government, state government and union territory administration.

**Central Information Commission** means the commission constituted under sub-section (1) of section 12.

**Central Public Information Officer** means the designated authority under sub-section (1) and includes Central Assistant Public Information Officer designated as such under sub-section (2) of section 5.

**Chief Information Commissioner** and **Information Commissioner** means the authorities appointed under sub-section (3) of section 12.

**Competent Authority** means Speaker in Legislative Assembly and Chairman in Legislative Council, Chief Justice of India, Chief Justice of High Court, President or the Governor and administrator appointed under Article 239 of the Constitution.

**Information** means any material in any form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

**Prescribed** means rules made under this Act by the appropriate Government or the competent authority, as the case may be.

**Public Authority** means any authority or body or institution of self-government established or constituted by the Constitution, law made by Parliament,
law made by State Legislature, notification issued by an appropriate Government, and any non-government organization financed by the appropriate government.

**Record** includes any document, manuscript, file, microfilm, microfiche, facsimile copy and any material produced by computer or any other device.

**Right to Information** means the right to information accessible under this Act which is held by or under the control of any public authority and include the right to inspection or obtaining information available in different forms.

**State Information Commission** means the commission constituted under sub-section (1) of section 15.

**State Chief Information Commissioner** and **State Information Commissioner** means the authorities appointed under sub-section (3) of section 15.

**State Public Information Officer** means the authority designated under sub-section (1) and **State Assistant Public Information Officer** means the authority designated under sub-section (2) of section 5.

**Third Party** means a person other than the citizen making a request for information and includes a public authority.

The Supreme Court in Central Board of Secondary Education v. Aditya Bandopadhyay held that the Act does not cast an obligation upon the public authority to collect or collate such un-required and non-available information. (2011) 8 SCC 497: JT 2011 (9) SC 212: (2011) 8 SCALE 645.

**4.3.2 Right to Information and Obligations of Public Authorities**

All citizens shall have the right to information subject to the provisions of the act. Every public authority shall maintain all its records on different systems so that access to such records is facilitated. It shall be a constant endeavor of every public authority to take steps to collect information, computerize the information and connect them through a network. It shall be the duty of every public authority to provide as much information *suo moto* to the public at regular intervals through various means of communications. All materials shall be disseminated taking into
consideration the cost effectiveness, local language and the most effective method of communication. Every public authority should designate as many officers to provide information within 120 days to persons requesting for the information without prejudice to the provisions of the act. The information seekers shall make a request in writing or through electronic means in English or Hindi or in the official language of the area without mentioning the reasons. If the information sought concerns the life or liberty of a person, the same shall be provided within 48 hours. The Supreme Court (2010:209) in Khanapuram Gandaiah v. Administrator Officer held that the information sought must be in existence and accessible to public authority. The information pertaining to the security and other interest of the state is exempted from disclosure.

4.3.3 The Central Information Commission

The Central Government constitutes a body called Central Information Commission to exercise the powers and perform the functions. It consists of Chief Information Commissioner and Central Information Commissioners not exceeding ten. They shall be appointed by the President on the recommendation of a committee consisting of Prime Minister, Leader of Opposition and Union Cabinet Minister. They shall hold office for a term of five years. They are entitled to the salaries and allowances as that of Chief Election Commissioner / Election Commissioner. The Central Government provides officers and employees for the efficient performance of their functions. They can be removed from service on the ground of proved misbehavior by the President of India.

4.3.4 The State Information Commission

Every State Government constitutes the State Information Commission consisting of Chief Information Commissioner and Information Commissioner, not exceeding ten. They shall be appointed by the Governor on the recommendation of a committee consisting of Chief Minister, Leader of Opposition and a Cabinet Minister. They shall hold office for a term of five years from the date of appointment. The salaries, allowances and other conditions of services are in accordance with the state government regulations. The state government shall provide officers and employees for the efficient performance of their functions.
They can be removed from service on the ground of proved misbehavior by the Governor.

4.3.5 Powers and Functions of the Information Commissioners, Appeal and Penalties

The Central Information Commission or State Information Commission can receive complaints from persons who have been refused access to any information requested under the act. They can also look into the cases if the information seekers or given incomplete, misleading or false information. There shall be reasonable grounds to inquire into certain irregularities or lapses. The aggrieved persons may also appeal to the officers if they do not receive information within 30 days. The decision of the Central or State Information Commission shall be binding. The officials shall be given a reasonable opportunity of being heard before any penalty is imposed on them.

4.3.6 Miscellaneous

This part deals with the protection of action taken in good faith, actions which have overriding effect, bar of jurisdiction of courts and certain organizations exempted from the act. The information pertaining to the allegations of corruption and human rights violations shall not be excluded according to the provisions of the act. The Central and State and Commissions shall prepare an annual report on the implementation of the provisions of the Act. The Government may also organize educational programmes to increase the awareness of people about the Act. The Central and State Governments have the power to remove certain constraints and difficulties in the Act.

Comment

A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; and taking certified samples of material held by the public authority or held under the control of the public authority. It is important to note that only such information can be supplied under the Act which already exists and is held
by the public authority or held under the control of the public authority. The Public Information Officer is not supposed to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions. The Act gives the citizens a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

4.4 Court Judgments on Right to Information in India

The champions of democracy have emphasized the need and importance of people’s participation in the process of governance on the basis of adequate access to official information. Several international conventions have also prevailed upon the national governments to bring about a special legislation to ensure public right of access to government information. These international efforts have sought to promote democracy, the rule of law, just and honest government and fundamental human rights. The new millennium is regarded as an era of transparency and accountability on the part of government and all sectors of society concerned with public welfare and progress. The national and regional judicial fora too have recognized the importance of right to information which offers several advantages to the mankind. Jurists have also upheld that right to information is a key livelihood and development issue. The courts have also enlightened the policy makers and administrators about the relevance of right to information from social justice and economic development points of view in India. The major decisions of Supreme Court and High Courts are presented briefly in this part under two headings namely Supreme Court on Right to Information and High Courts on Right to Information.

4.4.1 Supreme Court on Right to Information

Supreme Court of India (1973:194) examined the case of Bennett Coleman & Co. v. Union of India and struck down the newsprint control order saying that it directly affected the petitioners’ right to freely publish and circulate their paper. The court observed: “The constitutional guarantee of the freedom of speech is not so much for the benefit of the press as it is for the benefit of the people. The freedom of speech includes within its compass the right of all citizens to read and be informed”.

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This judgment highlighted the need for right to information in the post-independence era in India.

Supreme Court of India (1975:195) examined the case of Uttar Pradesh v. Raj Narain and stated: “In a Government of democracy like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any right have no repercussion on public scrutiny. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption”.

Supreme Court of India (1982:196) examined the case of S.P.Gupta &ors V. Union of India and noted: “Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority for it would be all shrouded in the veil of secrecy without any public accountability. But if there is an open government with means of information, available to the public, there would be a greater exposure of the functioning of the government and it would help to assure the people of a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration”. The court upheld the truth that an open government is clean government and a powerful safeguard against political and administrative aberration and inefficiency. Thus, the right to information has a solid constitutional foundation in a developing country like India.

Supreme Court of India (1984:197) examined the case of Indian Express Newspapers (Bombay) Pvt. Ltd. v. India and remarked: “The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know.” The court held that Article 142 of the
Constitution enables the Court in the exercise of its jurisdiction to make such order as is necessary for doing complete justice in any cause or matter pending before it. The court ordered that the petitioners and others who are engaged in newspaper business shall make available to the Government all information necessary to decide the question.

Supreme Court of India (1987:198) examined the case of the Sheela Barse, v. State of Maharashtra and pointed out that when factual information is collected as a result of interview the same should usually be cross-checked with the authorities so that a wrong picture of the situation may not be published. The court noted that as and when reasonableness of restrictions is disputed it would be a matter for examination and tape-recording should be subject to special permission of the appropriate authority. The court ordered that interviews cannot be conducted under forceful circumstances but the willingness of the prisoners to be interviewed would always be insisted upon.

Supreme Court of India (1988:199) examined the case of the Reliance Petrochemicals Ltd., v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and others and observed that pending determination of the issues raised, any court will order interim relief to such applicants by way of grant of such refunds. The court held that the petitioner will be liable to make any such refund only if it is ultimately decided by this court or any other court that the issue of debentures is invalid and that the application moneys have to be refunded. The court ordered that there was no cause for apprehension on the part of the petitioner that the publication of any such article could abort the debenture issue in the manner it could have done.

Supreme Court of India (1992:200) examined the case of Manubhai .D. Shah v. Life Insurance Corporation and stated: “The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others”. The court held that Doordarshan being a State controlled agency funded by public funds could not have denied access to the screen to the respondent except on valid grounds. The court accepted the point of view of the petitioners who submitted that the film faithfully brought out the events that took place at Bhopal on that fateful night. The court also noted that the respondent cannot be accused of having distorted the events subsequent to the disaster. The court
ordered that Doordarshan being a State controlled agency funded by public funds could not have denied access to the screen to the respondent except on valid grounds.

Supreme Court of India (1992:201) examined the case of Usman Gani J. Khatri of Bombay Etc. v. Cantonment Board and Ors and noted: “Both individuals and groups have the right to know information and distinguished between the ordinary citizen looking for information and groups of social activists”. This was considered a landmark judgment concerning the right to information in Indian democracy. A perusal of the observations made in the above order leave no manner of doubt that this Court had clearly mentioned that it was not expressing any opinion on the contentions raised by the parties nor on the questions decided by the High Court. Thus, the above decision cannot be considered as a precedent for the cases in hand before us and no help can be sought by the petitioners on the questions now raised before us and decided by giving detailed reasons as mentioned above”.

Supreme Court of India (1995:202) examined the case of the Ministry of Information and Broadcasting, Govt. of India, and Others, V. Cricket Association of Bengal and others and remarked: “The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. The right to communicate, therefore, includes the right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. This fundamental right can be limited only by reasonable restrictions under a law made for the purposes mentioned in article 19(2) of the Constitution”. Finally, the court ordered that it would be equally open to the nodal Ministry (Government of India) to permit such foreign agency in addition to AIR/ Doordarshan, if they are of the opinion that such a course is called for in the circumstances.

Supreme Court of India (1995:203) examined the case of the Tata Press Ltd., V. Mahanagar Telephone Nigam Limited and others and pointed out that the Nigam/union of India cannot restrain the appellant from publishing Tata Press yellow pages comprising paid advertisements from businessmen, traders and professionals. The Court also held that the appellant shall not publish in the Tata
Press yellow pages any entries similar to those which are printed in the white Pages of the telephone directory published by the Nigam under the Rules.

Supreme Court of India (1997:204) examined the case of the case of Dinesh Trivedi, M.P. and Others v. Union of India and Others and observed: “Democracy expects openness and openness is a concomitant of a free society. It is important to realise that undue popular pressure brought to bear on decision makers in government can have frightening side effects. Any public issue needs to be addressed by a body which function with the highest degree of independence, being completely free from every conceivable influence and pressure. Such a body must possess the necessary powers to be able to direct investigation of all charges thoroughly before it decides, if at all, to launch prosecutions. To this end the facilities and services of trained investigators with distinguished records and impeccable credentials must be made available to it”. The court called upon the authorities to maintain a fine balance which would serve public interest ultimately.

Supreme Court of India (2002:205) examined the case of Union of India V. Association for Democratic Reforms and others and stated: “The true and correct statement of assets owned by the candidate should be disclosed. The Election Commissions is directed to call for information on affidavit by issuing necessary order in exercise of its power under article 324 of the Constitution of India from each candidate seeking election to Parliament or State Legislature”. The court also held that the educational qualifications, assets, liabilities, pending cases, conviction and other details should be submitted for public scrutiny and action.

Supreme Court of India (2003:207) examined the case of People’s Union For Civil Liberties (PUCL) and Another, Petitioner v. Union of India and Another, With Lok Satta and Others, v. Union of India and noted: “The foundation of a healthy democracy is to have well informed citizens-voters. The reason to have right of information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is voter’s discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. Exposure to public scrutiny is one of the known means for getting clean and less polluted person to govern the country”. The court
upheld the need for enabling the voters to know relevant antecedents of the candidate contesting the elections.

Supreme Court of India (2003:206) examined the case of Indira Jaising v. Registrar General, Supreme Court of India and remarked: “It is no doubt true that in a democratic framework free flow of information to the citizens is necessary for proper functioning particularly in matters which form part of public record. There are several areas where such information need not be furnished. The inquiry ordered and the report made to the Chief Justice of India being confidential and discreet is only for the purpose of his information and not for the purpose of disclosure to any other person”. The court ordered that information which belongs to exceptional category need not be disclosed to anybody under the existing principles and practices. That position in law is very clear. Thus, the only source or authority by which the Chief Justice of India can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made the subject-matter of a writ petition to disclose a report made to him.”

Supreme Court of India (2003:205) examined the case of the People’s Union of Civil Liberties v. Union of India & another and pointed out that the right to information provided for by the Parliament under Section 33A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. The court held that there is no good reason for excluding the pending cases in which cognizance has been taken by Court from the ambit of disclosure. The provision made in Section 75A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. The court ordered that the Election Commission has to issue revised instructions to ensure implementation of Section 33A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken.

Supreme Court of India (2007:208) examined the case of Research Foundation for Science Technology and National Resource Policy v. Union of India and observed: “The right to information and community participation for protection
of environment and human health is also a right which flows from article 21. The Government and authorities have, thus to motivate the public participation. These well enshrined principles have been kept in view by us (Court) while examining and determining various aspects and facets of the problems in issue and the permissible remedies”.

Supreme Court of India (2010:209) examined the case of Khanapuram Gandaiah v. Administrative Officer & Ors and stated: “Under the Act, an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc but he cannot ask for any information as to why such opinions, advices, circulars, orders etc have been passed especially in matters pertaining to judicial decisions. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order and or judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode”. The court held that a judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order to protect the public from the dangers to which the administration of justice would be exposed. The court ordered that applicants have no right to seek information which would adversely affect the independence of the judiciary.

Central Information Commission (2011:36) examined the case of Mr.R S Misra v. Central Information Commission and noted that information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. The commission held that all citizens have the right to access information under Section 3 of the RTI Act and PIOs shall provide the information sought to the citizens, subject always to the provisions of the RTI Act only. It is the citizen's prerogative to decide under which mechanism i.e. under the method prescribed by the public authority or the RTI Act, she would like to obtain the information.

Supreme Court of India (2011:210) examined the case of the Central Board of Sec. Education & v. Aditya Bandopadhyay & Ors and remarked: “The disclosure of information with reference to answer books does not involve infringement of any copyright and therefore section 9 of RTI Act will not apply”. The court held that
certain demands for disclosure of all and sundry information unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The court ordered that the Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens.

Supreme Court of India (2012:212) examined the case of Girish Ramchandra Deshpande v. Cen. Information Commr. & Ors and pointed out that the performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression personal information, the disclosure of which has no relationship to any public activity or public interest. The court held that the disclosure of personal information would cause unwarranted invasion of privacy of that individual. The court ordered that personal information stands exempted from disclosure unless it involves a larger public interest which justifies the disclosure of such information.

Supreme Court of India (2012:213) examined the case of the Namit Sharma v. Union of India and observed that the High Powered Committee at the Centre and the State levels is expected to adopt a fair and transparent method of recommending the names for appointment to the competent authority. The court held that the Information Commission is bound by the law of precedence, i.e., judgments of the High Court and the Supreme Court of India. The court ordered that the Commission shall give appropriate attention to the doctrine of precedence and shall not overlook the judgments of the courts dealing with the subject and principles applicable, in a given case.

Supreme Court of India (2012:211) examined the case of Bihar Public Service Commission v/s Saiyed Hussain Abbas Rizwi & anr and stated that the examinees shall be given access to evaluated answer books either by permitting inspection or by granting certified copies which does not contain any information or signature of the examiners and other authorities to ensure their security. The court
held that such disclosure should prevent since the possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out. The court ordered that transparency in such cases is relatable to the process where selection is based on collective wisdom and collective marking.

Supreme Court of India (2013:214) examined the case of the Thalappalam Ser. Coop. Bank Ltd. & v. State Of Kerala & Ors and noted that the Registrar of Cooperative Societies is not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. The court held that other public authorities can also access information from a Co-operative Bank of a private account maintained by a member of Society under law. The court ordered that an information which has been sought for relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing.

4.2.2 High Courts on Right to Information

High Court of Rajasthan (1986:148) examined the case of L.K.Koolwal v. State of Rajasthan and remarked that every citizen has a right to know about the activities of the state, the instrumentalities, the departments and agencies of the state. The state can impose the reasonable restrictions in the matter like other fundamental rights where it affects the national security and any other allied matter affecting the nation’s integrity. The court ordered that in the matter of sanitation and other allied matter every citizen has a right to know how the state is functioning.

High Court of Delhi (2002:51) examined the case of Ozair Husain v. Union of India and pointed out that it is the fundamental right of the consumers to know whether the food products, cosmetics, and drugs or of non-vegetarian or vegetarian nature. The court ordered that there is a constitutionally guaranteed right of the consumers to the full disclosure of the products and services delivered by the companies.
High Court of Karnataka (2004:99) examined the case of K.Ravikumar v. Bangalore University and observed that in the light of the policy of the government on transparency and openness, the authorities cannot flatly deny any document on the ground of confidentiality or secret in such matters. The court held that transparency and openness provide a right of information to citizen for enforcing his constitutional right of judicial review in a court of law.

Madhya Pradesh High Court (2005:114) examined the case of Ram Vishal v. Dwaraka Prasad Jaiswal and stated that the record of Municipal Corporation is a public record and usually it will be presumed that there should be no difficulty in getting the certified copy of public record. The court further held that there must be some reason which has to be placed on record in case of denial of information to the applicant.

Allahabad High Court (2008:09) examined the case of the Dhara Singh Girls High School v. State of Uttar Pradesh and noted that whenever there is even an iota of nexus regarding control and finance of public authority over the activity of a private body or institution or an organization etc. the same would fall under the provisions of Section 2(h) of the Act. The court held that the working of any such organization or institution of any such private body owned or under control of public authority shall be amenable to the Right to Information Act. The court ordered that whenever there is even an iota of nexus regarding control and finance of public authority over the activity of a private body or institution or an organization etc. the same would fall under the provisions of Section 2(h) of the Act.

Kerala High Court (2009:103) examined the case of the Thalapalam Service Co-Operative v. Union of India and remarked that all citizens had the right to information and public offices are duty bound to provide the information to the people about the funds which are made available to them by the Government. The court held that the funds reach a society as a result of the actions taken by the Government, thereby making available, the necessary finance that is required for the society for its activities. The court ordered that arming of citizenry with information is not a matter that should be trimmed, crippled, clipped or excluded. It ought to be permitted to be available wherever it could, except where it is impermissible in order to achieve the objective of the RTI Act.
Bombay High Court (2009:30) examined the case of Nagar Yuwak Shikshan Sanstha, Wanadongri, Nagpur v. Maharashtra State Information Commission and pointed out: “The Public Trust is not run by the government either directly or indirectly and its management and affairs are controlled by the trustees. No doubt, the public trusts are subject to regulatory measures to be found in Bombay Public Trusts Act. But that does not mean that either the charity commissioner or the appropriate government controls this public trust by virtue of the fact that such public trust is registered one and regulatory measures are made applicable”. The court ordered that the government does not have control over the management and its affairs either directly or indirectly.

Delhi High Court (2010:53) examined the case of CPIO, Supreme Court of India v. Subhash Chandra Agarwal and observed: “The privacy rights, by virtue of section 8(1)(j) of the RTI Act whenever asserted would prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests personal information about a public servant, such as asset declarations made by him – a distinction must be made between the personal data inherent to the position and those that are not and therefore, affect only his/her private life”.

Kerala High Court (2010:104) examined the case of the Treesa Irish v. The Central Public Information and stated that the universities should disclose the information pertaining to evaluation of answer papers by the examiners in the larger public interest and to ensure proper valuation of answer papers. The court held that the answer papers of the petitioners should be valued by an expert and the eagerness of public authorities to limit the scope of the request for information under the Act arises out of its inertia.

Delhi High Court (2011:54) examined the case of Arvind Kejriwal v. Central Public Information Officer and noted that confidential information relating to third party without notice or without hearing third parties cannot be furnished. The court held that information seeker is not required to give any reason for obtaining official information. The court ordered that the information relates to a third party and can be prima facie regarded as confidential as it affects the right of privacy of the third party. The second situation is when information is provided and given by a third
party to a public authority and prima facie the third party who has provided information has treated and regarded the said information as confidential.

Delhi High Court (2012:55) examined the case of the Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr and remarked that information should be furnished by the Public Information Officers without malafide or deliberately without any reasonable cause. The court held that penalty can be imposed if the officers failed to provide the information, or knowingly furnished incorrect, incomplete or misleading information or destroys the information. The court ordered that such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in.

Bombay High Court (2012:31) examined the case of Public Information Officer v. Manohar Parrikar and pointed out that the posts of President and Governors are created by Constitution of India. They are public authorities under section 2(h) of Right to Information Act, 2005. The court held that the PIO acts as a medium for dissemination of information by the public authority under the RTI Act. The PIO can be subjected to a penalty under Section 20 of the RTI Act for non-disclosure of the information. The proviso to Section 20 provides that the PIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him. Thus, the PIO is, in effect, a party litigant in an appeal or a second appeal which is filed before the first appellate authority or the Information Commission and in certain circumstances is also personally liable to a penalty.

Bhushan (2015:25) remarks: “No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy. It was on the basis that the Right to Information is a fundamental right of people, that the Court ordered that even candidates contesting elections would be obligated to publicly disclose information about their criminal antecedents and their income and assets etc. Yet, though the courts general pronouncements on the right to information have been very liberal, its practices have often not been in conformity with the declared right”.

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Mathur (2015:117) sums up the utility of court judgments which have facilitated proper understanding of the RTI laws and implementation of the provisions of the Act over a period of time. It reads: “Right to Information Act 2005 gives unprecedented powers to the citizens to hold public authorities accountable for performance of the government institutions and making them more transparent in their actions. Understandably, these institutions, which have traditionally not been used to sharing information with public, have inhibitions in providing information, often taking recourse to some grounds for exemptions provided in the Act. Many times these grounds are not held valid by information commissions and courts causing avoidable embarrassment to public authorities. RTI Act, which has very radical provisions, is perceived as potentially the most potent intervention for good governance. Overtime, various provisions of the Act have been interpreted by SIC, CIC, High Courts and the Supreme Court through their judgments and there is now greater clarity on the provisions than there was still a few years back. These judgments, though voluminous, provide interesting and useful insights to public authorities into how a particular provision needs to be used while handling RTI applications. A large number of petitions have gone to various High Courts and the Supreme Court which have, through their judgments, provided clarifications and interpretations to various provisions of the Act”.

The courts have clearly pointed out that in a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The citizens of India have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. The courts have also emphasized the need for enabling the people to have access to information regarding disputes and legal proceedings. The courts have observed that the people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. The judicial pronouncements have also highlighted the right to know which is derived from the concept of freedom of speech, though not absolute.

4.5 Initiatives for the Implementation of RTI Act, 2005

The Right to Information Act, 2005 heralded a new era of participatory communication, governance and development in India. The Central Information
Commission and State Information Commission were established in India and other states/union territories to ensure proper implementation of the act across the country and safeguard public interest. An attempt was made by the researcher to understand the effectiveness of right to information on the basis of certain cases registered under RTI in India.

The Gujarat based Mahiti Adhikar Gujarat Pahel, a non-government organization launched a drive against bribe using the Right to Information Act at the Satyagrah Kochrab Ashram for 15 days which ended on July 15, 2006. About 1366 cases were filed against the non-compliance by the government officials. This development boosted the confidence of the people and some citizens became propagators, volunteers and activists of RTI eventually. In Assam and Bihar states, the non-government organizations also educated and organized the activists who fought against the violation of the provisions of the act. In Bihar, the activists prevailed upon the government to establish an RTI call centre namely ‘Jankari’. The people were enabled to approach the centre and register their complaints against the anomalies.

In Gujarat, Agariya Heet Rakshak Manch, a non-government organization filed application seeking information on the access and uses of Comprehensive Mobile Health Van Units. This incident paved the way for regular visit of the van to the work places and organization of proper health check-up and treatment services to the people. The use of RTI resulted in the improvement of health care services in the rural areas.

In 2008, Kabir initiated the nationwide RTI campaign to create new consciousness among the people of India about the advantages of the new legislation which was intended to enhance transparency and accountability in government and promote greater participation in governance by informed citizens. The organizers used several grassroots level communication campaigns including production of documentaries for the rural and urban audience. They had even collected over 600 success stories and disseminated information through booklets, newsletter, mass contact programmes, advocacy campaigns and workshops. This initiative also created a large number of RTI activists who filed applications for want of
information on governance and fought against non-implementation of the provisions of the RTI Act in India.

The Government of Jammu and Kashmir gave a serious thought to the implementation of right to information law since the Right to Information Act, 2005 was not applicable to the state of Jammu and Kashmir. The Jammu and Kashmir Right to Information Bill, 2009 was intended to provide an opportunity for people to participate in the making of a seminal law that aims to transform the fundamental operating principle of Government from obsessive secrecy to compulsory openness. It was closely modelled on the provisions of the Central Right to Information Act enacted in 2005. The civil society had played an important role in this regard.

In Maharashtra, the government had diverted water from 43 dams to Socio Economic Zones in big cities and helped the industrialists at the cost of farmers and other civilians. The RTI came to the rescue of activists and farmers and the Government of Maharashtra passed an ordinance in September 2010 under the initiative of the water ministry is to legalize past inequitable decisions to take away water rights of farmers and give them to big industries and big cities.

In Assam, the All Assam Shramik Krishak Kalyan Parishad created awareness among the masses about the misuse of funds earmarked for flood control by the officials. It was found that about 70 per cent of the funds meant for flood control and other works related to water resources department had been siphoned off by the minister, officers and employees of the department of water resources. The activists noted that only 30% of the work was completed in the different districts of the State. The activists had urged the Chief Minister to order a CBI inquiry into the alleged irregularities.

In Madhya Pradesh, an environmental activist Ajay Dubey filed an RTI application seeking information on number of industries emitting waste in air and water beyond the norms set by the government. The state pollution control board in its reply said that more than 300 commercial units in Madhya Pradesh caused pollution by emitting harmful air and water effluents beyond the permissible limits. The State Pollution Control Board gave details of about 313 such industries which flouted standard pollution control norms during 2009-10. The activists fought against water pollution and strived for the protection of public interest.
In Gujarath, Noor Jahan fought against the local officials who refused to provide drainage facility. She filed an RTI request and obtained information from the District Panchayat Office. She came to know that about 18 drainage pipelines and also 480ft construction works were also sanctioned. The officials had to undertake the civil works and the people saved money because of the availability of information.

In Karnataka, B.M.Shivakumar, a resident of Kengeri Satellite town had obtained information about the abuse of political power by the then Chief Minister of Karnataka Mr. B.S.Yeddyurappa. The people came to know that the Chief Minister had given away sites in prime localities at dirt cheap rates to his near and dear ones. The Karnataka Information Commission (KIC) informed that about 51% of the total RTI applications were related to the revenue and urban development affairs. A majority of the applications in these departments pertained to land sale deeds, khata conversions, mutation and record of rights copy. In urban development section, most of the applications pertained to property disputes, illegal constructions and encroachments and building plan violations. The activists prevailed upon the authorities to digitize all land records in the state.

In Delhi, an RTI application was filed after the collapse of the building in Lalita Park wherein 65 persons were killed. Other RTI applications revealed that more than 65 buildings in Shahadra, East Delhi were illegal. The information also reveals a close connection between the builders and officials of the MCD and DDA. The local citizens became aware of the nexus between the builders and officials who took the law and people for granted.

In Tamil Nadu, RTI activists questioned the illegal allotment of houses by the Tamil Nadu Housing Board and found the illegal transactions which adversely affected the common masses that had no political clout and financial power. The political leaders, judicial authorities and government officials had obtained the land or flats at rates 40-60% less than market value. This had caused significant loss to the state exchequer and injured the public interest.

In several states, the RTI activists had identified the illegal issue of fake caste certificate to the undeserving persons because of bribe and political backup. The upper caste persons had obtained SC/ST/OBC certificates and procured
government jobs illegally. Such cases were brought to the fore and the culprits were brought to the book on the basis of authentic information obtained by the activists and aggrieved persons.

The RTI activists also questioned the irresponsibility of railway officials in Kerala and Karnataka. They had questioned the non-availability of railway coaches which resulted in great inconvenience to the people. The authorities had to increase the number of railway coaches in the trains after protests by the passengers and activists. The issue also came before the then Railway Minister Mamta Banerjee who responded to the problems of the people.

In Mumbai, the RTI activist Nikhil Desai had filed an RTI plea with the Bombay Municipal Corporation to find out what they planned in the five gardens at Dadar Parsi Colony. The municipal corporation had spent Rs 70 lakh on laying pavements and redoing the lawn at just one of the five gardens at Dadar Parsi Colony. The people had noticed the unnecessary works, exorbitant expenditure and loss to the government after obtaining information. The people strongly protested against the abuse of power and misuse of public funds on the basis of the information obtained by them through RTI.

The RTI activists also obtained information from the central and state government departments about unfilled vacancies due to lack of political will and social commitment. They also questioned about the non-implementation of reservation policy in the appointment and promotion matters. The governments were persuaded to conduct a special drive to fill up the backlog vacancies and many persons received the benefit of appointment and promotion subsequently.

The National Rural Employment Guarantee Programme was not properly implemented in the rural areas by the elected representatives and officials. The activists of Sabar Ekata Manch and Janpath had conducted survey and noticed certain irregularities in the maintenance of muster rolls and payment of wage to the workers. The officials were also sensitized by the media comments and public criticisms about the irregularities. The workers were enabled to get minimum wage as per the rules.
The RTI activists found certain irregularities in the distribution of food grains in the fair price shops in different parts of the country. The ordinary people had become victims of circumstances because of corrupt practices adopted by the shop owners who enjoyed political support. The organizers questioned the lethargic attitude of the officials and prevailed upon them to include the names of eligible persons in the Antyodaya and BPL list and delete the names of rich people from the list of beneficiaries.

4.6 An Analysis of the Impact of Right to Information Act, 2005

The Right to Information Act, 2005 was hailed as a revolutionary law with the potential of fundamentally altering the balance of power between the government and citizens in India. It was expected to usher in a new era of transparent and open governance and merge with and strengthen the aspirations of people for participatory democracy. The law also provides a way for citizens to access information and records held by public authorities at the central, state, and local government levels and establishes an independent grievance redressal system to deal with complaints that arise from noncompliance with the norms and guidelines of good governance. The civil society, progressive organizations, media and other institutions have popularized the law by mobilizing citizens to ensure optimum utilization of the law and enjoy the benefit of good governance. Efforts are also made by the progressive individuals, activists and researchers to assess the effectiveness of implementation of RTI Act over a period of time. There are certain advantages and disadvantages identified by the fact finders. Practically, the disadvantages outweigh the advantages with respect to implementation of the provisions of RTI Act, 2005.

The National Conference of RTI Activists at Gandhi Peace Foundation, New Delhi held on July 28-29, 2008 was attended by 120 RTI activists from across the country. The activists at the conference felt that the ICs, by delaying the disposal of appeals, were proving to be the main stumbling block in the implementation of RTI Act. The conference also took note of the denial of justice at the ICs regarding the non-compliance with the provisions of the Act by the information officers. The malfunctioning of the commission was also subjected to serious criticism by the participants. There was unanimity among the participants about the self-disclosures
of the ICs which are poorly maintained or not frequently updated due to inadequate infrastructure to maintain the data. The citizens are highly dissatisfied with the functioning of majority of ICs which have not lived up to their expectations.

Justice Bahri (2009:12) has expressed optimism about the Right to Information Act, 2005 and observed: “The Right to Information Act, 2005 is doubtless a milestone in the deliberate route taken by the country for setting up bedrock foundation for democratic institutions and impact depth to the public responsive functioning of the Government and its various agencies. It is a significant tool to ensure transparency in most of the operations of the Government. Its proper implementation will ensure good governance and eliminate corruption and thereby move up the ranking of the country in the index of honesty in the governmental and institutional operations. The RTI will definitely develop as a model and effective democratic tool after enhanced level of public awareness”.

The Government of India thought of amending the RTI Act in 2010 with a view to enhance its draconian clutches on the governance of the country. The Government justified the move by stating that amendments to the RTI Act meant to improve the functioning of the law and prevent its misuse. Srivastava (2010:191) notes: “There are no common rules and regulations framed by the central and state governments in regard to delivery of information to the people. The central and state regulations are in conflict with each other which have resulted in certain discrepancies and obstacles to citizens’ efforts to use the law for good governance. There is also visible gap between the promise and performance in regard to the implementation of the provisions of the RTI Act”. The recruitment policy of the government is questionable. It is devoid of professionally tested and tried parameters. The human resources management, operations management, record management, monitoring and evaluation are not systematic in the offices which are responsible for the effective implementation of the RTI Act. A scientific analysis is presented under the following headings.

**Malmourished Information Commissions**

The Public Information Officers still sustain the colonial legacy and have not adjusted with the new environment of ‘disclosure and transparency’. The Central
and State Information Commissions are not fully equipped with professionally competent and socially committed functionaries. The human resources policy pertaining to RTI Act is not really encouraging. The activists have also experienced that Public Information Officers are not accessible to them and general masses since they are not found in the office regularly. They are also performing other functions that could keep them away for long periods of time.

In reality, many ministries and departments of the central and state governments have appointed multiple public information officers who function on part time basis indifferently. The officers spend most of their time and energy on other duties and responsibilities assigned to them. There is lot of confusion about the appointment of Assistant Public Information Officers (APIOs), both at the central and state levels even though the Act clearly states that officers should be designated to perform their duties as information providers.

The success of RTI movement primarily depends upon the availability of well trained and competent manpower at various levels. The functionaries also lack the communication skills, managerial skills and public relations skills. They also exhibit continued resistance to the RTI Act at various levels and failed to create an enabling environment for citizens to exercise their right to information according to empirical evidence gathered by the scholars and activists. The politicians and bureaucrats have joined hands and impeded the progress of implementation of the provisions of the Act for reasons best known to them.

Acharya (2010:01) observes: “The functionaries have not grasped the essentials of Right to Information Act due to inadequate training and orientation programmes. The Central and State Information Commissions are not enriched by adequate visionaries and missionaries due to lack of political will among the persons who control the system. Most of the information commissioners are former bureaucrats who are appointed on the basis of political considerations rather than professional competence. They have not succeeded in establishing good rapport with common masses and expediting the disposal of cases in their offices. They have not lived up to the expectations of the government and civil society”.
Myneni (2013:131) notes: “Public Information Officers face difficulties to access the required information from the concerned department in his organizations so that it can be provided to the information seeker. Public Information Officer has an additional responsibility which prevents dedicated efforts to disseminate information to the people”.

Chowdhury (2014:41) laments: “The citizens have begun to use the provisions of the Act to expose corruption and maladministration in the country. The bureaucrats who worked in the information commissions and other departments as information officers had developed a negative attitude towards the Act and treated it as a burden. The ineffectiveness of information commissions is another factor hampering the RTI. The government’s practice of appointing retired bureaucrats as information commissioners who spent their professional lives opposing disclosure of information does not augur well from the point of view of efficiency of the service providers”.

**Limited Scope of Operations**

The RTI Act also has a limited scope since it brings under its purview public authorities that are established, constituted, owned, or substantially financed by central, state, or local government bodies as well as organizations substantially controlled or financed by government funds including non-governmental organizations. In the age of economic liberalization, the private sector is growing in leaps and bounds as compared to the public sector. The private sector undertakings have taken the law of the land for granted and amassed abundant wealth through illegal and unconstitutional means. These organizations have not complied with the norms of corporate social responsibility. The champions of public interest have advocated the need to revisit the RTI Act, 2005 by bringing the private sector under the ambit of this legislation. They have also thought it is necessary to bring the private sector under an act, especially on the accusations that there is rampant corruption in this sector even more compared to the public sector. They have strongly advocated the need for bringing more sectors under the ambit of RTI Act for bringing transparency and accountability and above all level playing in a democratic country like India.
The private sector organizations including the multinational corporations which have embraced all walks of life are not brought under the purview of the Act. The citizens are not allowed to understand the politics of marginalization hatched by the market forces in the country. The public-private partnership based activities are not adequately covered by the Act. Too many exceptions also have dampened the spirit of the Act. Limited numbers of reasonable exceptions have to be identified by the policy makers for making suitable changes and modifications to the Act.

The public information officers are not accessible to the masses and the information seekers are subjected to delay and discrepancies. There is no single window approach in each department/ ministry to avoid inconvenience to the information seekers. The officers also design their own application forms and lay down certain conditions that are contrary to the law. There are no specific guidelines which are commonly followed across the country in respect of submitting applications for information and dissemination of information to the applicants.

Ansari (2008:11) writes: “The parliamentary proceedings, confidential proceedings and other secret deliberations involving the national security and integrity could be the part of reasonable exceptions. But, the file notes concerning administrative and developmental matters should not be excluded from the purview of the Act. The people have a right to know about the quality of governance and status of development in the country”.

**Lack of Autonomy, Manpower and Funds**

The scholars and activists have suggested that the budgets of information commissions be delinked from any government department and be determined by the Parliament or the state assembly, as the case may be. But, the government has not given a serious thought to the subject and failed to develop the information commissions through manpower and operations management. Civil society groups have argued that information commissions should not depend on government for budget, staff and other requirements. They should have functional autonomy and financial autonomy to function effectively and realize the goals of RTI Act. The central and state governments have not provided adequate funds for the implementation of the provisions of RTI Act. Limited funds and facilities have not
really enhanced the quality of manpower, implementation and awareness campaigns. Studies have reported that the inadequacy of budgets, infrastructure, manpower, facilities and strategies has impeded the progress in the country. Inadequate staff and non-implementation of the provisions of the Act have attracted serious criticism by the various stakeholders of right to information. Banerjee (2010:14) states: “Adequate training programmes are not organized across the country at various levels to enhance the capacity of the functionaries and enhance the status of implementation of provisions of RTI Act. The activists have advocated the need for greater training and capacity building among government officials on the provisions of the RTI Act. There are no schemes for recognition and promotion of worthy and efficient officials in this field”.

**Absence of Pro-Active Disclosure**

There is no visible success in the pro-active disclosure of information for better public administration and welfare in the country. There are no well equipped nodal agencies in the center and state level administration for effective implementation of the provisions of RTI Act. The Central and State Governments are criticized by the jurists, scholars and activists for the non-availability of well organized implementation framework at various level as outlined in the RTI Act. Barowalia (2013:17) laments: “The ministries in the central and state governments have failed to comply with the provisions of the Act. There is deliberate negligence on the part of the government bodies which have failed to streamline the disposal of RTI applications”. Myneni (2013:131) comments: “Different departments find difficulties in doing their routine job but they are asked to furnish information to the Public Information Officer. Lack of preparedness among the officers concerned is a major constraint in the implementation of the Act.

**Backlog of Files**

The poor maintenance of records and retrieval system existing in the Government makes it difficult to disclose the loads of information within the prescribed time limit. Scattered information at different levels and absence of efforts for consolidation has also made this task quite difficult. There is a huge backlog of files in the office of information commissioners across the country. The RTI Act
appeals process is becoming an increasingly bureaucratic exercise because information commissions are unable to process appeals and complaints in a timely manner. The inordinate delay in the processing of files and delivery of goods has raised serious questions about the efficacy of information commissions in enforcing the RTI Act. The information seekers are also not equipped with the understanding, skill and competence in regard to the norms, guidelines and procedural aspects. Studies have reported that inadequate funds, manpower and facilities have caused set back to the effective functioning of information offices at various levels. Most of the Public Information Officers in both the central and state governments are known for inadequate commitment, capacity and involvement. They are not specialists in the art and craft of information management. Bellver et.al. (2008:21) opine: “A vast majority of the functionaries are neither information literates nor information specialists under the existing circumstances. They are also not fully aware of the procedures and formalities which has created a huge backlog of pending appeals and complaints with the information commissions. The information seekers are not happy with the sincerity and efficiency of the enforcement mechanisms under the RTI Act”.

**Improper Management of Records**

The public authorities have not achieved notable success in the management of records and delivery of information relating to the RTI Act. The record keeping practices across central and state governments generally still remain quite poor according to the Second Administrative Reforms Commission (2006:170). It had noted that the practice of cataloguing, indexing, and orderly storage was absent at various government levels. The commission had recommended the creation of a public records office and a onetime allocation of one percent of funds from flagship programs over five years to update records and improve infrastructure. Besides this, the records management practices in most states have not been revised in decades. The use of information and communication technology in improving governance and service delivery is not adequate since the development of IT infrastructure to improve the efficiency of public service delivery is not up to the mark.
Inadequate Training Programmes

Some non-government organizations have organized workshops and training programmes in a limited number across the country and tried to create a new generation of information seekers and activists. The media institutions have also reported the malfunctioning of the implementing agencies time and again. The activists have also emphasized the need for incorporation of some more progressive provisions into the legislation such as appointing specialists, simplifying procedures, increasing the quality of operations and upgrading the delivery system. Bhattacharyya (2014:24) comments: “The organizers have highlighted that citizens have a right to know how they are governed and to participate actively in the process of auditing their representatives”.

Absence of Adequate Punitive Measures

The officials who violate the provisions of the RTI laws are subjected to a maximum penalty of Rs.25,000 and disciplinary action in India. But the erring officials are not subjected to the penalty of imprisonment in India. This is also one of the factors which have impeded the progress of the RTI Act. Bindal and Bindal (2009:26) point out: “The information commissions are autonomous organizations and the decisions taken by them are final and binding. There is no provision for appeal to the High Court or Supreme Court in times of delay or injustice”.

Lack of Scientific Monitoring and Evaluation

The monitoring and evaluation mechanisms and practices are not appreciated by the activists. The information commissions are required to submit annual progress reports to the government on the state of implementation of the law. The information on the number of public authorities that have submitted annual reports to the CIC in the recent years is not available. The policy makers are not able to received timely and concrete data in order to make systematic efforts for the standardization of the operations. The information commissions have been empowered to order public authorities to fully comply with the provisions of the RTI Act. There is no well prescribed time limit for processing the appeals and complaints under the existing circumstances.
The RTI Act has proved to be a useful tool for citizens and civil society groups to legally demand information on the functioning of state sponsored rural development and welfare programs. The enactment of the RTI Act itself is perceived as a symbolic shift from a culture of secrecy to one of transparency and openness. The information commissions have failed to achieve success in the proactive disclosure of information which is plagued by several constraints. Borah (2013:32) analyzes: “A majority of the commissions have not excelled in the proactive disclosure of information. The new communication technologies including websites are not properly used for this purpose. Most of the requests made by the individuals are not fulfilled by the authorities concerned even though the RTI laws are useful in accessing government information and resolving basic problems”.

Puddephatt (2006:145) observes that a major challenge to the implementation of the RTI Act is this mindset of resistance within public institutions, concluding that while a moment of political will and a concerted push by civil society allowed for the RTI Act to pass, it is not clear, given this resistance, the extent to which political will has translated into improved implementation outcomes. The analysis of the implementation of the RTI Act suggests mixed results. The civil society groups and media have used the law to demand a range of information from the government that has been used as the basis of campaigns demanding basic rights and entitlements, especially for the poor and marginalized sections of society. There are certain inbuilt constraints and drawbacks which need to be addressed by the stakeholders of RTI Act in order to bring about systemic changes in the rules and procedures governing the disclosure of information for better governmental accountability in India.

4.7 Summary

The Right to Information Act, 2005 is very comprehensive and covers almost all matters of governance and has the widest possible reach. There is a well established linkage between right to information and good governance which requires that civil society has the opportunity to participate during the formulation of development strategies that directly affected communities and groups in a democratic society. The civil society, NGOs, media and other institutions have
played a crucial role in the enactment of the Act which has come a long way in India. The UPA government played the major role and ensured the enactment after series of struggles, debates and discussions across the country. The courts have also enlightened the policy makers and administrators about the relevance of right to information from social justice and economic development points of view in India. The policy makers and bureaucrats have not played a responsible role in the implementation of the provisions of the Act. Several activists and non-government organizations have launched a drive against the non-compliance with the provisions of the act by the government officials. Efforts are also made by the progressive individuals, activists and researchers to assess the effectiveness of implementation of RTI Act over a period of time. A majority of the commissions have not excelled in the proactive disclosure of information. There are certain advantages and disadvantages identified by the fact finders. Practically, the disadvantages outweigh the advantages with respect to implementation of the provisions of RTI Act, 2005.