

## **ENSURING AN INFORMED CITIZENRY: EXAMINING SOME OF THE LAWS IN INDIA WHICH MANDATE DISCLOSURE OF INFORMATION**

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### **ABSTRACT**

The right of access to information held by Government, empowers citizens to be able to engage and participate in decisions that affects their lives. The right of access to information is essential to the democratic functioning and the well being of the individuals. It enable the strengthening of citizen participation and the exercise of socio-economic and political rights , fosters development ,economic preference and makes government accountable for their actions and management of public finances and public services. There are various Indian laws which provide for the right to access information in specific contexts. Most of these laws provide information on demand and does not sufficiently stress to give such information proactively. Publicity about information laws and their provisions is critical. Awareness about these laws is still low in India especially among the rural population, and marginalized groups. Inadequate publicity of these laws is the biggest challenge in accessing information. This article looks at the concept of access to information and its relation with transparency and accountability in the system of governance in India. The article takes a detail look at the laws other than the RTI Act, 2005 which mandates disclosure of information in India. Finally, the paper is encapsulated with certain suggestions, which the government can incorporate to make the governance more transparent and accountable.

**Keywords:** Access to Information, Informed Citizenry, Transparency, Public Participation

### **1. INTRODUCTION**

Information, the saying goes, is power. Conversely, the absence of adequate and accurate information can collapse economies, cripple governments and paralyze societies. It is not the military might or economic prosperity that can be considered as indicators of a strong nation, rather it depends on the good governance of the nation. Governance means rules, processes and behaviour that affect the way in which powers are exercised. The principles that underpins good governance are openness, participation, accountability, effectiveness and coherence. If the people are well informed, they will be more vigilant and therefore, democracy is bound to

become more vibrant. Access to government information is one of the conditions for democratic participation through which the common people can exercise democratic control over government authorities. For a fair, free public administration and transparency in governmental actions, information is an important element which could be obtained only through empowering the people to have access to official information. To diminish information to people of the Government is to diminish their participation in Government. As **Jefferson** said:<sup>1</sup>

"Information to the people is the most certain and legitimate engine of government. When a government refuses to put its trust in the people, the people in turn will withdraw their trust from the Government". In real sense, Government of the people, by the people and for the people requires that people should know who govern them and how are they being governed.

Government openness is a sure technique to minimize administrative faults. As light is a guarantee against theft, so governmental openness is a guarantee against administrative misconduct. **Justice V.R. Krishna Iyer** rightly said:<sup>2</sup> "A Government which reveals in secrecy - --- not only acts against democratic decency but busies itself with its own burial". Secrecy in Government, when it reaches a point where it seriously constricts the availability of information of public affairs, threatens the vitality of democracy itself. Nothing so diminishes democracy as secrecy. Access to information, on the other hand, is power in the hands of the electorate. It demands accountability. The hallmark of a meaningful democracy is the institutionalization of transparent and participative processes which gives the electorate access to information about the government it has brought to power.

The right of the public to know is fundamental in any society that is governed by the rule of law. As Governments hold information in trust for the public, it follows that the public have the right of access to the information that the State holds. An informed public could also act as a guard against corruption within and outside of Government.<sup>3</sup> The right to information is a basic right that buttresses good governance, democracy and the practical realization of human rights. Good governance is not achieved simply by having efficient government or even a democratically elected government. Freedom of information and the assurance of widespread citizen participation in public affairs and an active civil society are essential for the full realization of democracy and to develop a culture of human rights and accountability. The recognition of right to information is crucial for achieving these ends, hence there is a need for guaranteed and

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<sup>1</sup> Quoted by K.K. Mathew, "The Nature and Scope of the Right to Know in a Democratic Republic", S.C.C., 1979, *Journal Section*, p.19.

<sup>2</sup> *Maneka Gandhi v. Union of India*, (1978), SCC 248; AIR 1978 SC 597.

<sup>3</sup> International Commission of Jurists, *Freedom of Information Survey*, International Commission of Jurists: Nairobi, 2006, p. 1 (Noting that the right to know is useful "tool for fighting corruption and waste of public resources")

legislated right to information. Internationally, the legislations on access to information are known as 'Freedom of Information laws'.

The right of access to information is a critical tool for democratic participation, oversight of the State and public administration, and the monitoring of corruption. In democratic systems, in which the State's conduct is governed by publicity and transparency, the right of access to information in the State's possession is a fundamental requirement for ensuring democratic participation, good and transparent conduct of public affairs, and the oversight of government and its authorities by public opinion, as it enables civil society to scrutinize the actions of the authorities. Free access to information is a means for the citizens in a participatory and representative democracy to exercise their political rights. Indeed, the full exercise of the right to access to information is necessary to prevent abuses by public officials, promote accountability and transparency in government, and enable solid and informed public debate that ensures effective recourse against government abuse and prevents corruption. Only through access to information of public interest that is held by the State can citizens question, investigate and consider whether public duties are being performed properly. The importance of access to public information in guaranteeing the transparency, integrity and responsibility of the conduct of public affairs, respect for social rights, freedom of expression and freedom of the press, as well as the necessity of protecting the right to such access, have been recognized by almost all the democracies. Likewise, it has been underscored in several multilateral treaties and other international instruments.<sup>4</sup> The right of access to information is a key instrument for the exercise of other human rights, particularly by the most vulnerable individuals.

The existence of a right to have access to government information is increasingly accepted around the world, both at the domestic and international levels. Many nations designated the 'right to information' as the "human right of access to information". At the domestic level, a right to information was seen to be finding its place in the Constitutional law of several nations, and since the early 1990s, there has been a huge upsurge in the number of States adopting Freedom of Information laws.<sup>5</sup> The right to information under international law has its roots in **Article 19** of the **Universal Declaration of Human Rights** (UDHR) and in **Article 19** of the **International Covenant on Civil and Political Rights**, where it is provided that everyone enjoys the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The UN Human Rights Committee (UNHRC) has provided a clear enunciation of what

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<sup>4</sup> [http://www.oas.org/dil/access\\_to\\_information\\_iachr\\_guidelines.pdf](http://www.oas.org/dil/access_to_information_iachr_guidelines.pdf) ( accessed on 25.5.2018)

<sup>5</sup> Roger Vlugels, "Overview of all FOI Laws", *Fringe Special* ,2011, available at: [http://www.right2info.org/resources/publications/laws-1/ati-laws\\_fringe-special\\_rogervlugels\\_2011-oct](http://www.right2info.org/resources/publications/laws-1/ati-laws_fringe-special_rogervlugels_2011-oct) (accessed on 02-05-2018). See also, Ackerman and Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws" 58 *Adm. L. Rev.* 85(2006). Also see, Law Commission of India Report No.275,p.38

the right involves, emphasizing that Article 19 “embraces a right of access to information held by public bodies”. “Such information”, the Committee noted, “includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production”.<sup>6</sup> Access to information has become a standard element of several human rights treaties,<sup>7</sup> and has been widely adopted in various international agreements pertaining to sustainable development, the environment, food and agriculture and corruption, among other substantive areas.<sup>8</sup> Freedom of opinion and freedom of expression are recognized as indispensable conditions for the full development of the person. They are essential for any society.<sup>9</sup> Apart from the Constitution and RTI Act, 2005 there are number of statutes which mandate disclosure of information or provide the right to access to information in India. These statutes are complementary and supplementary to the right to information law and serve the purpose of the access to information thereby honoring people’s right to know.

## 2. ANATOMY OF TRANSPARENCY AND PUBLIC PARTICIPATION

Transparency and public participation are the current buzzwords of governance, being used unsparingly not only in India, but by Governments and international institutions all over the world. They have been a part of the debate on political reform in India for a long time. Transparency in administration is the *sine-qua non* of participatory democracy. The citizen’s right to information is the soul of transparency and improves the quality and ethics of decision making by the concerned authorities. This is considered to be the best way to ensure fruitful exercise of the powers by these authorities.<sup>10</sup> According to **Kotaro Tsuru**<sup>11</sup>: The ‘improvement of transparency’ is the only available and decisively important means to enabling otherwise limited government governance to function properly. Greater transparency makes it difficult for

<sup>6</sup> General Comment No. 34 of the UNHRC, CCPR/C/GC/34, para. 18, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> ( accessed on 21-05-2018). Report of the Special Rapporteur, Mr. Abid Hussain, pursuant to Commission on Human Rights resolution 1993/45 E/CN.4/1995/32, para. 135, available at: <https://documents-ddsny.un.org/doc/UNDOC/GEN/G94/750/76/PDF/G9475076.pdf?OpenElement> ( accessed on 21-05-2018).

<sup>7</sup> Report of Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression, A/70/361, para. 6, available at: <https://documents-ddsny.un.org/doc/UNDOC/GEN/N15/273/11/PDF/N1527311.pdf?OpenElement> ( accessed on 22-05-2018)

<sup>8</sup> Report prepared by Article 19 (a British human rights organisation), titled “Open Development: Access to Information and the Sustainable Development Goals”, available at: <https://www.article19.org/wp-content/uploads/2017/07/Open-Development-Access-to-Information-and-the-SDGs-2017.pdf> at 6-9 (accessed on 21-05-2018)

<sup>9</sup> U.N. Doc. CCPR/C/90/D/1173/2003, Communication No. 1173/2003, Abdelhamid Benhadjand Ali Benhadj v. Algeria, available at: [http://www.worldcourts.com/hrc/eng/decisions/2007.07.20\\_Benhadj\\_v\\_Algeria.htm](http://www.worldcourts.com/hrc/eng/decisions/2007.07.20_Benhadj_v_Algeria.htm) (accessed on 02-05-2018); See also, U.N. Doc. CCPR/C/64/D/628/1995, Communication No. 628/1995, Tae Hoon Park v. Republic of Korea, available at: <http://hrlibrary.umn.edu/undocs/session64/view628.htm> (accessed on 02-05-2018).

<sup>10</sup> Mark .G. Yudof, ‘ When Govt speaks: Politics, law, and govt, expression \ Uni. of California Press, 1983, p.24.

<sup>11</sup> Tsuru, Kotaro (2003). Transparency of Government (Part 1) - Breakthrough for Reforming the Shape of a Nation.

government officials and politicians to ignore the interests of the general public when undertaking their duties, while at the same time enhancing citizen participation in politics and increasing competition among political parties. If the reinforcement of government governance leads to the further improvement of transparency, thereby creating a virtuous circle, it may eventually evolve into a major driving force for changing the shape of a nation.

Traditionally, participation in political and economic processes and the ability to make informed choices had been restricted to small elite in India. Consultation on important policy matters, even when they directly concern the people was rarely the practice. On the contrary in today's changed scenario information is required in each and every walk of life, without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choices. In a democratic process public is only able to truly participate when they have information about the activities and policies of government, and when people can see what benefits and services they are entitled to and whether they are receiving what should be expected. Knowledge of what the state and other institutions do is fundamental to the power of people to hold them to account and improve the way in which they work. Absence of, or inaccessibility to, information often creates a sense of disempowerment, mistrust and frustration. On the other hand, access to relevant, up-to-date information can create a basis for natural exchange, allowing both official and the public to better access decisions taken and policies implemented. Transparency is an important principle of good governance since a degree of clarity and openness about how decisions are taken can help to build the capacity of the poor and/or marginalized to play a role in policy formulation and implementation; to influence these decisions that affect their lives; and to encourage decision- and policy-makers to exercise their power for the greater good.

Transparency, as used in science, engineering, business, the humanities and in a social context generally, implies openness, communication, and accountability. It is a metaphorical extension of a transparent object being one that can be seen through. Transparent procedures include open meetings, financial disclosure statements, freedom of information legislation on budgetary review, and audits. In politics, transparency is used as a means of holding public officials accountable and is hailed as a means of fighting corruption. When a Government's meetings are open to the press and the public, its budgets may be reviewed by anyone, and its laws and decisions are open to discussion, it is seen as transparent, and there is less opportunity for the authorities to abuse the system for their own interests.<sup>12</sup>

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<sup>12</sup> [www.thefreedictionary.com/transparency](http://www.thefreedictionary.com/transparency)

**Lucas Powe** argues that “typically the right to know is aimed at the Government, and it demands more knowledge of what is happening”.<sup>13</sup> Thus, the “primary responsibility”<sup>14</sup> for disclosure lies with the State. Officials must, therefore, “facilitate added access to places of information”<sup>15</sup> Other commentators have expressed similar sentiments. According to **David O’Brien**, the “right to know is constitutionally enforceable against the Government”.<sup>16</sup> He further writes that the “public have the legal right to investigate and examine the conduct of affairs”.<sup>17</sup> There are several benefits that could accrue if the right information is availed to the public. Primarily, access to the right information has an impact on the enjoyment of other fundamental entitlements that are due to human beings,<sup>18</sup> including life, health and education. In absence of such right it would be difficult for any individual to realize any entitlement as he or she may not be aware of its existence. The provision of accurate information provides individuals with the data and knowledge that they require to participate effectively in the democratic process in any political society. In many ways this promotes the right to participate in elections. Additionally, information could enable individuals to make informed choices about their lives and livelihoods, thus, promoting the fundamental right to life, among others. Further, an informed public is likely to contribute to the economic development of any society compared to one that is ignorant.<sup>19</sup> This contribution could be in the form of ideas. An informed public could also act as a guard against corruption within and outside of Government.<sup>20</sup>

Openness and transparency are often used interchangeably. Governmental transparency equates to open government. Author feels that transparency is one component of openness and participation the other. Transparency is defined as being able to observe government decision-making processes whereas participation refers to the opportunity to participate in these decision-making processes. Participatory democrats argue that citizen participation in decision-making is vital to democracy and the legitimacy of decision-making can be enhanced if there are more opportunities for citizens to participate other than merely voting in periodic cycles. The focus of open government in a participatory perspective is thus is to facilitate citizen participation in decision-making with a view to fostering citizen acceptance, cooperation and confidence in

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<sup>13</sup> Lucas Powe, *The Forth Estate and the Constitution: Freedom of the Press in America*, 1991, p.256 ,University of California Pres: Berkeley.

Available at <https://www.right2info.org/resources/publications/publications/towards-promoting-access-to-information-in-kenya-2011> (accessed on 25.6.2018)

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> David O’Brien, *The Public’s Right to Know: The Supreme Court and the First Amendment* ,1981,p.2 Praeger: New York.

<sup>17</sup> *Ibid*

<sup>18</sup> *Supra* note 3

<sup>19</sup> David Makali, *Media Law and Practice: The Kenyan Jurisprudence*,2003,p.121, Phoenix Publishers: Nairobi.

<sup>20</sup> *Supra* note 3

governmental and quasi governmental actors and their decisions. Openness gives citizens the tools to make the government more responsive to its wishes, and helps provide the additional information necessary to create and hold citizens interest in their government and ultimately to achieve ordered liberty in a democratic society.

### **3. CONCEPT OF ACCESS TO INFORMATION**

Jurisprudence of Human rights integrates the trinity of freedom of information, communication and expression, into the New World Order.<sup>21</sup> Trend is being created in favor of more information and less secrecy. Iron- curtains have been thrown open in many countries. The Idea of a open society with more information access restructuring of bureaucracy and free discussions have become the order of the day. The basic principle, upon which most of the legislations for the access to information stands, is to change the mindset of the Government and the people. If people are the masters, the servants and the agents, bureaucrats and the politicians cannot keep the information away from them. To bring confidence in the common man, his right to know what decisions are being made , to supervise the implementation of these decisions and to take stock of what has been done by the bureaucracy are the fundamentals of a transparent and open Government. This concept covers the right to have access to Government held documents and records.<sup>22</sup>

In democratic systems, in which the State's conduct is governed by publicity and transparency, the right of access to information in the State's possession is a fundamental requirement for ensuring democratic participation, good and transparent conduct of public affairs, and the oversight of government and its authorities by public opinion, as it enables civil society to scrutinize the actions of the authorities. Free access to information is a means for the citizens in a participatory and representative democracy to exercise their political rights. Indeed, the full exercise of the right to access to information is necessary to prevent abuses by public officials, promote accountability and transparency in government, and enable solid and informed public debate that ensures effective recourse against government abuse and prevents corruption. Only through access to information of public interest that is held by the State can citizens question, investigate and consider whether public duties are being performed properly.

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<sup>21</sup> Sean MacBride (Mac Bride Report) 'Many Voices, one World' UNESCO publication, (1979) p. 113. The MacBride report, was a 1980 UNESCO publication written by the International Commission for the Study of Communication Problems, chaired by Irish Nobel laureate Sean MacBride. Its aim was to analyze communication problems in modern societies, particularly relating to mass media and news, consider the emergence of new technologies, and to suggest a kind of communication order (New World Information and Communication Order) to diminish these problems to further peace and human development.

<sup>22</sup> P.M.Jasmi, "Freedom of information in Public Administration", *Cochin University Law Review*, 2002, p.92.

The value of information lies in its use for understanding the situation, in decision making and planning, predicting, monitoring and reviewing activities. It is important that in order to be of use information is accurate, and relevant, the value of the information is not an inherent or constant quality. It depends on the needs of the recipient and on the use to which it is put. Information is not only valuable for the individual but also for an organization or at the national level. **Pauline Atherton** in “Handbook for Information Systems and Services”<sup>23</sup> explains the value of information for a nation. It can be used to:

- Improved capability of a country to take advantage of existing knowledge and ‘know-how’ achieved elsewhere.
- Rationalization and systematization of a country’s research and development efforts in light of knowledge already available.
- Creates a wider knowledge base for the solution of problems.
- Provides new alternatives and approaches to the solution of technical problems, and options for minimizing future ones.
- Improves effectiveness and efficiency of technical activities in the production and service sectors and
- Results in better decision making in all sectors and at all levels of responsibility. The value of information to a nation suggests its relationship to development

There are numerous ways in which information can be made accessible to members of the public in a parliamentary system. Members of the public can seek information from their elected representatives. Annual reporting requirements, committee reports, publication of information and administrative law requirements also increase the flow of information from government to the citizen. Recent technological advances also help to reduce the gap between the ‘information rich’ and the ‘information poor’. However, the Government releases only that information which suits it, unless someone forces it to give a complete picture of the truth, because of the ground that the disclosure would prejudice the Government activities<sup>24</sup>.

#### **4. FROM SECRECY TO THE DISCLOSURE: A TRANSITION**

The State, represented by its public officials, bureaucratic institutions and the political executives, is an agent vested with powers given by the citizens (principals) to govern the Nation for the welfare of the people. The paradox is that even though the State derives its ‘power’ from the people who are the ultimate principals, the State develops mechanisms to arrogate this ‘power’ as its own. The State weaves a veil of secrecy around its activities through legislative measures that forbid its public officials to divulge information about official activities. Once the

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<sup>23</sup> Pauline Atherton, *Handbook for Information Systems and Services*, UNESCO, 1977

<sup>24</sup> Jeffery Jowell and Dawn Oliver, ‘The Changing Constitution’ (3rd ed.), 1996, p.436 Clarendon Press, Oxford.



knowledge about governance becomes inaccessible to the public, the government officials cannot be questioned for their acts of commission and omission. This gives them space or discretion for the misuse or abuse of the power that is vested in them.

Any Government, democratic or otherwise, shall abuse its powers if it is permitted to function in secrecy. Secrecy, being an instrument of conspiracy ought not to be a system of regular government.<sup>25</sup> Secrecy breeds corruption. Secrecy, in fact, contributes to disempowerment of ordinary citizens. It means their total exclusion from process which vitally affects their existence. Too much secrecy in government results in the erosion of the basic right of the citizen to know, dilution of responsibility of the government to inform the people and disappearance of the norms of accountability in the system of government.<sup>26</sup>

With the growth of centralized bureaucracies and the increasing complexity of statecraft, the focus of secrecy based power shifted to the area of governance. The advent of colonialism and slavery, the latter a variation of the former, created a political need to keep the ruled in ignorance of what the rulers were really up to. The colonial government in India kept itself at a distance from the people. It thrived on the culture of secrecy, and distrust of the people. The culture of secrecy continued even after independence and even after India became a republic.

In India, information has not been an easy thing to get - its accessibility has always been questionable, the colonial culture of the **Official Secrets Act, 1923** is still current coin in India. Section 5 of the said Act prevents any person, who obtains or has access or who is in possession of any secret, from passing it to any person, both the possessor and the person to whom it is passed may be prosecuted. The agony is that the Act does not define "Secret", it is left to the Government to decide what is secret. Similarly under some of the provisions of **Central Civil Services (Conduct) Rules, 1964, Evidence Act, 1872, Code of Criminal Procedure, 1973, Constitution of India, Commission of Inquiry Act, 1962** etc., information can be withheld.<sup>27</sup> These statutes changed the whole scenario of democratic set up of our country as many things were kept secret and there is no precise definition of the word "secret".

In recent years there has been a striking global movement, of which India has become a part, towards strengthening the protection of right to information and enhancing the ability of individuals to access Government held information. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human

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<sup>25</sup> Faizan Mustafa, *Freedom of Information, International and National Perspective*, 2003, p.3.

<sup>26</sup> S.K. Gaur, "Status of Right to Information in India", *Law Review*, Vol. 19, 1997, p.66.

<sup>27</sup> Section 123 and 124 of Indian Evidence Act, 1872, Section 162(1) of Code of Criminal Procedure, 1973, Articles 74(2), 163(2) of Constitution of India, Rule 8 of Central Civil Service Conduct (Rules) 1955. Section 18, Atomic Energy Act, 1962.

beings. It forms the crucial underpinning of participatory democracy, it is essential to ensure accountability and good governance. It could bring a sense of empowerment to the citizens of this country, empowerment that is necessary to check the rapid downward slide of Government performance and standards, and concurrent trend of declining public expectations. If Government is a collective entity in modern democratic era, transparency makes it distinct from the rule of yore. The gains of democracy cannot be complete without access to information. Transparency opens the doors to progress and empowers people on a just basis. The dominant culture of secrecy, which has been retained as a colonial legacy, continued over decades after independence and resulted in denial of access to information to the citizens. Under the guise of protecting public interest, acts of oppression and corruption are committed by public servants with impunity. Secrecy is apt to foul the atmosphere and create a communication gap between the government and the people, threatening in long run the very legitimacy of government actions. Observance of secrecy in wrong matters cover up possible administrative deficiencies and thus has the effect of even promoting downright arbitrariness in public administration. With sprawling secrecy, there is no possibility of public debates on important issues of the day. In the process, the government emerges as the loser; there is no feedback available to it on the reactions of the people. Democracy without a free flow of information relating to official affairs reduces itself to the level of a farce. The stronger the efforts at secrecy, the greater the chance of abuse of authority by functionaries. If the people are well informed, they will be more vigilant and therefore, democracy is bound to become more vibrant. Access to government information is one of the conditions for democratic participation through which the common people can exercise democratic control over government authorities.

## **5. LAWS WHICH FACILITATE DISCLOSURE OF INFORMATION IN INDIA: ANALYSIS**

Transparency relies on access to information. Access is guaranteed through various ways. The most important one is the *openness or information culture* under which the government and people act openly and transparently by conduct without any legal sanction. The second is the *constitutional guarantee of the right to information and access to information legislation* which provides access to information having public importance. Under this, citizens may have access to information as a matter of fundamental/legal right. It is the main instrument of guaranteeing transparency. There is also a third way of getting information. Although the constitutional law regarding right to information is the major source of access to government information, there are other several ways by which government and public information is available to members of the public i.e. legislations which directly or indirectly, latently or patently deal with different facets of right to information . In India apart from the Constitution and RTI Act, 2005 there are number of statutes which mandate disclosure of information or provide the right to access to information

in India. These statutes are complementary and supplementary to the right to information law and serve the purpose of the access to information thereby honoring people's right to know<sup>28</sup>.

**(i) Constitutional Provisions :**

Though the Indian Constitution does not provide a separate right to freedom of information in explicit terms yet, the Constitutional goal and philosophy support it. The provisions of the Preamble, the Fundamental Rights, the Policies laid down by the Directive Principles and the Mandate of Fundamental Duties help to invent the right to information within the Constitution. India's pledge to foster respect for international law and treaty obligations and judicial activism, as reflected in the interpretations given to Articles 19(1)(a) and 21 of the Constitution, have contributed in the evolution of the concept of right to information.

The Supreme Court, in series of decisions ruled that the Right to Information is implicit in the guarantee of freedom of speech and expression because it is nothing but an aspect of speech and expression and partakes of the same basic nature and character. The Apex Court in India, has vastly expanded the scope of the Right to freedom of speech and expression; to include within its ambit the "Right to Information".<sup>29</sup>

The Supreme Court of India has clearly stated that the Indian Constitution is drawn upon the idea of open government which directly emanates from the right to know.<sup>30</sup> The Constitution explicitly states that it is enacted and adopted by the sovereign people of India, which, inter alia, secures to its citizens, justice-social, economic and political, Liberty of thought, expression and belief and assures dignity to the individual.<sup>31</sup> The basic philosophy thus enshrined in the Constitution supports citizen's right to information because people without information cannot live with dignity. What is more, liberty of thought and expression could not be meaningful without sufficient information.

The Constitution of India guarantees various fundamental rights to the individuals under Part III, which come to life only if the foundational information is freely available to the repositories of these rights. For, the right to know is at the root of all rights enumerated in Part-III, particularly the rights guaranteed in Articles 19(1)(a) and 21. The Fundamental Duties of the citizens incorporated in Part-IV-A of the Constitution can never be performed without a wide ranging right to search and to receive required facts and information. The Constitution of India, under Part IV, provides Directive Principles of State Policies. Though, the Directive Principles are not

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<sup>28</sup> Dr. Ram Krishna Timalsona , "Right to Information in Nepal: Constitutional and Judicial Perspectives " ,Paper presented in 1st National Convention on Right to Information Kathmandu, Nepal, March 28-29, 2011 ,p.4

<sup>29</sup> *State of U.P. v. Raj Narain*. AIR 1975 SC 885.

<sup>30</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>31</sup> The Constitution of India, Preamble.

enforceable in a court of law, they are fundamental in the governance of the country and it is the duty of the State to apply these principles in the making of laws.<sup>32</sup> Article 39(a), (b) and (c) of the Indian Constitution makes provisions regarding right to have an adequate means of livelihood, equitable distribution of material resources of the community and to check on concentration of wealth and means of production. Information or knowledge is resource or commodity or wealth, hence needs to be distributed equally to sub-serve the common good. Furthermore it must be equally accessible through equal opportunity and should not be concentrated in a few hands. It is possible only by enabling people to know what is their due and by imposing corresponding duty on the government to supply required public information. In order to translate constitutional vision into reality the role of education cannot be overemphasized. Education is resource<sup>33</sup> that is essential to exercise the right to information. Keeping in view the importance of education, recently Right to Education has been declared as Fundamental Right by the Indian Constitution.<sup>34</sup>

Under the Indian Constitution, it is provided that no person who is arrested shall be detained in custody without being informed, as soon as may be the grounds for such arrest nor shall he be denied the right to consult and to be defended by a lawyer of his choice.<sup>35</sup> There is also a provision that when a person is detained under a law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.<sup>36</sup>

The Constitution also provides that no civil servant can be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.<sup>37</sup> The rules of natural justice require that no person should be condemned unheard. Fair hearing means informing the person of the charges against him and giving him an opportunity to rebut those charges. The observance of these rules saves an action from being considered arbitrary under Article 14.<sup>38</sup> They also constitute the essential conditions of the reasonableness of restrictions on any of the rights given by Article 19 of the Constitution and have been held to be essential requisites of "the procedure

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<sup>32</sup> *Id.*, Article 37.

<sup>33</sup> S.P. Sathe, *Right to Know*, 1990, p.3.

<sup>34</sup> The Constitution of India, Article 21-A.

<sup>35</sup> *Id.*, Article 22(1).

<sup>36</sup> *Id.*, Article 22(5), *Lawrence D'Souza v. State of Bombay*, AIR 1965 SC 531; *Golam v. State of West Bengal*, AIR 1976 SC 754.

<sup>37</sup> Constitution of India, Article 311(2).

<sup>38</sup> *Royappa v. State of Tamil Nadu*, AIR 1974 SC 555

established by law" in accordance with which alone a person can be deprived of his life and personal liberty by Article 21 of the Constitution.<sup>39</sup>

Administrative actions which result in some adverse consequence for the individual, resulting in depriving him of a right or prejudicing his interest are called quasi-judicial. Such an action can be taken only after the person likely to be affected is given a notice and fullest opportunity of being heard. In recent years, courts have held that such a hearing should be given even in those actions which could not strictly come within the description of quasi-judicial actions.<sup>40</sup> The Supreme Court has now held that the administrative authorities whose decisions are subject to appeal must give reasons for their decisions.<sup>41</sup> This requirement of reasons doubtless involves giving of information to the person as to how the decision against him or in his favour has been taken. Reasoned decisions make administrative decisions legitimate.

Apart from this, the Constitution also requires that the President must be kept informed by the Prime Minister about "all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation."<sup>42</sup> He must also be furnished "such information relating to the administration of the affairs of the Union and the proposals for legislation" as he may call for.<sup>43</sup> Another source of information from the State is through questions asked in legislature by Members. Members ask questions and replies are prepared by Ministers – giving wrong information on questions constitute breach of privilege of the House.

### **(ii) Right to Information Act, 2005:**

The Parliament of India has passed the Right to Information Act in May 2005. This Act, which received Presidential assent in June 2005, comes into full force from 12 October, 2005. The passing of this Act is truly a historic occasion. For the first time, after nearly sixty years of independence, the citizens of India have a real opportunity to exercise this very important right. Though the Supreme Court of India has, on more than one occasion, declared that right to information is a fundamental right under Indian Constitution, but there was no comprehensive legislation providing for the effective exercise of the right to information by an individual.

In the last decade, some of the States had enacted their own transparency laws. These included Assam, Delhi, Goa, Jammu and Kashmir, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan and Tamil Nadu. However, barring few, most of these laws were weak and did not effectively facilitate access to information.

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<sup>39</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>40</sup> *S.P. Sathe, Right to Information*, 2006, p.38.

<sup>41</sup> *S.N. Mukherjee v. Union of India*, AIR 1990 SC 1984.

<sup>42</sup> Constitution of India, Article 78(a).

<sup>43</sup> *Id.*, Article 78(b).

In 2002, the Parliament of India had also passed the **Freedom of Information Act**, which was applicable to all the States (except Jammu and Kashmir) and to the Central Government. However, apart from the fact that this Act was also a weak Act, it was never notified and lay dormant from 2002 till it was repealed in 2005 by the new Right to Information Act.

The basic purpose of the Act of 2005 is to ensure an *informed citizenry*, vital to the functioning of a democratic society, needed to check corruption and to hold the governors accountable to the governed. The purpose of the Act is to open official actions to the light of public scrutiny, by requiring official agencies to adhere to a philosophy of full disclosure.

The law lays down the architecture for accessing information, which is simple, easy, time bound and inexpensive. Under the new Act each public authority must appoint a Public Information Officer (PIO), who accepts requisitions and provides information. The PIO must ordinarily respond to a requisition within 30 days, but extensions are allowed in some cases, for example when third party is involved. Information relating to the life or liberty of a person must, nevertheless, be provided in 48 hours. There will be stringent penalties for failing to provide information or affecting its flow. A major forward step is that the law now extends to all public authorities in the States and Union Territories. Thus, it is not confined to the central Government alone. So far as definition of "Public Authority" is concerned, now it includes Panchayats and Municipal bodies as also private bodies which are substantially finance by the Government. Another step in the right direction is that, the law exempts people living below poverty line from paying any fee for accessing information. An independent appeals mechanism is another key feature of the Act, the Information Commissioners (IC's) will hear appeals from people who believe that Government officials have wrongly withheld information from them. Setting up IC's is a radical new initiative under the new law and is a very positive step towards openness.

The Act seeks to provide a workable and balanced formula which makes available information that ought to be public, and at the same time, protects certain information which must remain confidential in order to protect legitimate governmental function. The emphasis of the Act is nonetheless on disclosure, since the Act clearly states that nothing therein authorizes the withholding of information or limits the availability of records to the public, except as specifically stated therein. It is axiomatic that the Government is required to release any information which is properly requested unless it is exempted. Virtually every document generated by an agency is available to the public in one form or another under the Act, unless it falls within one of the exceptions. Accordingly, the policy of the Act requires that its disclosure provisions be construed broadly and its exemptions be construed narrowly. The statute's broad provisions favouring disclosure, coupled with the specific exemptions, reveal a workable balance which government has struck between the rights of the public to know and the need of the

authorities to keep information in confidence to the extent necessary without permitting indiscriminate secrecy.

**(iii) Other Laws in India which Mandate Disclosure of Information:**

Even though most of the laws in India favour secrecy as a guiding principle in the governance yet there is a silver lining as well. There are some laws which do provide for the disclosure of information. Some of the Laws which provide for the disclosure of information are discussed here:

**(a) Evidence Act, 1872**

Under the **Evidence Act, 1872** the documents have been divided into two groups: private documents and public documents. Under **Section 75** it has been laid down that all documents which are not public documents are private documents. A public document has been defined<sup>44</sup> to mean 'a document which is the act or record of the acts of a sovereign authority, official bodies and tribunals, public officers, legislative, judicial and executive is a public document.' A public document is one which is prepared by a public servant in his official duty. All the public documents have this characteristic that they are kept in some special custody and provable by means of a copy without production of original. **Section 76** of the Evidence Act 1872 requires public officials to provide copies of public document to anyone who has a right to inspect them. This section provides that every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall be sealed, whenever such officer is authorized by law to make use of seal.

**(b) Criminal Procedure Code, 1973**

**Section 50** clearly states that the person arrested must be informed about the ground of his arrest and they should have the right to get the bail. This section further says that every police officer has to communicate full particulars of the offence for which the person without warrant has been arrested or other grounds for such arrest.<sup>45</sup> Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he must inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on behalf.

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<sup>44</sup> Section 74 of the Indian Evidence Act, 1872.

<sup>45</sup> Section 50,50-A Cr.P.C

Similarly, **Section 50A** of Criminal Procedure Code, 1973 explains about the obligation or duty of a person making arrest. This section says that every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends; relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information. This section further states that the police officer has to inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. It is also the duty of a police officer to make an entry about the person who has been informed for the arrest of his relative and this should be maintained in such form as may be prescribed in this behalf by the State Government. The Act clearly states that it shall be the duty of the Magistrate before whom such arrested person is produced to satisfy himself that the requirements of sub-section (2) and sub section (3) have been complied with in respect of such arrested person. However, Before the insertion Section 50-A in Criminal procedure code by the Amendment in 2005, the Supreme Court in **D. K. Basu v. State of West Bengal**<sup>46</sup>, had laid down some basic requirements in all cases of arrest and detention till the enactment of law to prevent custodial violence .The court had the observations about the identification of the police personnel, cause of arrest, time of arrest, proof of arrest, place of arrest, venue of custody, mode of communication, medical examination within prescribed time, proper notification about arrest and maintaining proper documents so that the transparency and accountability must be ensured to the greater extent. The court was of the view that the police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register. The court further observed that the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest. It was also the view of the court that A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest in himself such a friend or a relative of the arrestee. The court clearly directed that the time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12'hours after the arrest. The person arrested must be made aware of this right to

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<sup>46</sup> AIR 1997 SC610



have someone informed of his arrest or detention as soon as he is put under arrest or is detained. However, an entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is. The court made this fact clear that police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of affecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

**(c) The Indian Penal Code, 1860**

Indian Penal Code 1860 does not deal explicitly with a citizen's right to have information as the Indian Evidence Act 1872 but it contains various provisions which have close bearing on the responsibility of a public servant to provide correct information to the public, failing which the public servant concerned is liable to punishment for his acts of omission and commission in this regard.<sup>47</sup> The Indian Penal Code, defines a public servant<sup>48</sup> to include such categories of persons as every commissioned officer in the military, naval or air force of India, every judge, every officer of a Court of Justice, every juryman, assessor or a member of Panchayat assisting a Court of Justice or public servant, every arbitrator or other person to whom a cause or matter has been referred for decision or report by a Court of Justice or by any other competent public authority, every person who holds any office by virtue of which he is empowered to place or keep any person in confinement, every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect public health, safety or conveniences, every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, every person who is by virtue of his office discharges responsibilities in the conduct of election, and moreover every person who receives pay, remuneration or commission from the Government or from a local authority or corporation established by or under a Central, Provincial or State Act or a Government Company as defined in Section 617 of the Companies Act, 1956. The provisions relating to Offences by or relating to Public Servants are mentioned under Chapter IX of the Indian Penal Code, 1860. Public Servant framing an incorrect statement or making a wrong translation of a statement with

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<sup>47</sup> Chapter-IX of the Indian Penal Code, 1860.

<sup>48</sup> Section-21 of the Indian Penal Code, 1860- Every commissioned officer in the military, naval or air force of India, every judge, every officer of a Court of Justice, every juryman, assessor or a member of Panchayat assisting a Court of Justice or public servant, every arbitrator or other person to whom a cause or matter has been referred for decision or report by a Court of Justice or by any other competent public authority

the intention of causing injury to any person shall be punished for imprisonment up to three years or fine or both.<sup>49</sup>

**(d) The Representation of the People Act, 1950**<sup>50</sup>

For a free and fair election, an accurate and error-free electoral roll is the most important pre-requisite. Some of the electoral malpractices like bogus voting and impersonation, in a large part, result from defective electoral rolls<sup>51</sup>. For enhanced participation of electors in the electoral process and reducing the electoral malpractices, it is essential to improve the quality of electoral registration process and of the electoral rolls. Therefore, adequate stress has to be laid on the preparation and revision of the electoral roll.<sup>52</sup> In this context some of the provisions of the Representation of the People Act, 1950 has been discussed -

**Section 33 A. Right to information.—**

(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made there under, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether— (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction; (ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered

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<sup>49</sup> Section-167 of the Indian Penal Code, 1860- Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

<sup>50</sup> Section 33A of the Representation of People Act, 1950.

<sup>51</sup> P .Saxena , "Public Authority and the RTI", *Economic and Political Weekly*, 44: 16 (April. 2009), pp. 13-16.

<sup>52</sup> Justice Y.K. Sabharwal, "Right to information and Good Governance" *Nayadeep* 2006 Oct. 7 (4) pp. 17-30 .

under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.<sup>53</sup>

Section 33B. Candidate to furnish information only under the Act and the rules.— Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under.<sup>54</sup>

Moving forward in the same direction the Court in *Union of India v. Association for Democratic Reforms*,<sup>55</sup> held that voter's right to know antecedents including criminal past of a candidate to membership of Parliament or Legislative Assembly is also a fundamental right. Court observed that voter's speech and expression in case of election would included casting of vote and for this purpose information about candidate to be selected is a must. In this case the Supreme Court had further directed the Election Commission to acquire information about crime and property and education status of the candidate as a part of nomination paper. Subsequently Parliament amended the Representation of People Act<sup>56</sup> by which a candidate was required to supply information about his conviction in a criminal case, however, he was not required to give information about his assets and education. Declaring the amendment as illegal, null and void as violative of voter's fundamental right to know under article 19(1)(a), the Court held in *People's Union of civil liberties v. Union of India*,<sup>57</sup> held that the information allowed by the Amendment Act, 2002 is deficient in ensuring free and fair elections which is the basic structure of the Constitution. Similarly, Court in the case of *Onkar Lal Bajaj v. Union of India*,<sup>58</sup> held that people have a right to know the circumstances under which their representatives got allotment of petroleum retail outlets. Holding that the right to life has reached new dimensions and urgency, the Supreme Court in *R.P. Ltd. v. Proprietors Indian Express Newspapers, Bombay Pvt. Ltd.*,<sup>59</sup> observed that if the democracy had to function effectively, people must have a right to know and to obtain information about the conduct of affairs of the State.

#### **(e) Factories Act, 1948**

The **Factories Act, 1948**, which is one of the most important labour legislations in the country also provides for compulsory disclosure of certain informations. In fact, unless full information

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<sup>53</sup> . Ins. by Act 72 of 2002, s. 2 (w.e.f. 24-8-2002).

<sup>54</sup> Ins. by S. 3, *ibid.* (w.e.f. 24-8-2002)

<sup>55</sup> AIR 2003 SC 1743

<sup>56</sup> Third Amendment Act, 2002

<sup>57</sup> *Ibid.*

<sup>58</sup> AIR 2003 SC 1723

<sup>59</sup> *Ibid.*

regarding factory involving a hazardous process is furnished at the time of making an application for approval to establish such a factory or expansion thereof, the measures of safety and security cannot effectively be taken. In order to ensure the safety of the workers and the general public living in the vicinity of the factory, it has been made imperative to disclose all information regarding the dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the material or substances in the manufacture, transportation, storage and other processes so that suitable and effective measures may be taken for that purpose. The newly incorporated **Section-41 B** of the Factories Act, 1948 provides for compulsory disclosure of information by the occupier of every factory involving a hazardous process in the interest of workers and the general public living in the vicinity of such a factory. It may be noted that not only the duties have been imposed on the occupiers but the sanction has also been attached for the proper compliance thereof. It has been provided in sub-section(6) of Section 41-B that where any occupier of the factory contravenes the provision of sub-section (5) regarding the duty to inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed, if such factory engaged in a hazardous process on the commencement of the Factories (Amendment) Act 1987 within a period of thirty days of such commencement; and if the factory proposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process, the licence issued to such factory shall notwithstanding any penalty to which the occupier of the factory shall be subject to under the provisions of this Act, be liable for cancellation.

**(f) Water (Prevention and Control of Pollution) Act, 1974**

**Section 25(6)** of the **Water (Prevention and Control of Pollution) Act, 1974** also makes it compulsory for every State to maintain a register of information and water pollution. It says that "Every state shall maintain a register containing particulars of conditions imposed under this section and so much of the register as relates to any outlet or any effluent from any land or premises shall be open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises as the case may be, or by any person authorised by him in this behalf and the condition contained in such register shall be conclusive proof that consent was granted subject to the conditions

**(g) Air (Prevention and Control of Pollution) Act, 1981.**

Similarly, the **Air (Prevention and Control of Pollution) Act, 1981** provides for the disclosure of similar information regarding air pollution. But each of these enactments have an exception clause which provides that the information may be withheld if the disclosure is against public interest.

### **(h) Environmental (Protection) Act 1986**

The general law of the country on the environmental protection is contained in the **Environmental (Protection) Act 1986**. Both, the Act as well as Rules framed there under provide for the consultation with the people and disclosure of information. Section 3 of the Environmental (Protection) Act, 1986, empowers the government to take measures to protect and improve the environment. Rules framed under this Act, in particular Rule 5(3)(a), empower the government to call for objections from the public within sixty days from the date of publication of the notification against the intention of the government to impose restrictions and prohibitions on the expansion and modernization of any activity or new projects being undertaken unless environmental clearance has been accorded. **The Environment Impact Assessment Regulations**<sup>60</sup> further lay down, in paragraph 2(I)(a) read with Schedule IV, a procedure for public hearings and the requirement for the public to be given the executive summary of the proposal prepared by the person seeking to execute any such project. However, although these provisions are laudable, they often do not function in practice. These provisions which are meant to facilitate citizen input, are in fact too limited that environmental groups have to go to the courts to get more complete disclosure.

### **(i) Consumer Protection Act 1986**

Under the **Consumer Protection Act 1986**, the consumer has a right to be informed about the quality, quantity, potency, purity, standard and price of goods, so that he could be protected against unfair trade practices.<sup>61</sup> Consumers are required to know about the information regarding the products that are available for sale, it is the duty of the manufacturer/seller of the such product to provide the basic information to the consumer, as the consumer should believe that goods or services are safe for usage, otherwise he will be in a reasonable suspicion whether they are unsafe to them. Government mandated that all manufacturers/sellers should provide the information such as quality, quantity, potency, purity standard and price of goods on the product in the form of label to ensure safety and to protect the rights of consumers especially for consumable products to be labeled in a standard manner that consists of cost, quantity, the ingredients and instructions given to use the product safely. Similarly, declaration regarding, weights, prices, date of manufacture, date of expiry etc. are required to be made on the packages of commodities by manufacturers.<sup>62</sup>

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<sup>60</sup> Ministry of Environment and Forests, Government of India, Notification No. S.O.60(E) dated 27<sup>th</sup> January, 1994.

<sup>61</sup> Consumer Protection Act 1986, Section 6(b).

<sup>62</sup> Standards of Weights and Measures (Packaged Commodities) Rules 1977 Rule (6), made under Section 83 of the Standards of Weights and Measures Act, 1976.

For food products, Section 23 r/w Rule 32 of the **Prevention of Food Adulteration Act, 1954** confers on consumers a right to be informed whether or not the article of food is vegetarian or non-vegetarian. As regards drugs and cosmetics, necessary amendments have not been made in the relevant statute. In *Ozir Husain v U.O.I*<sup>63</sup>, the Division Bench of the Delhi High Court observed that it is the Fundamental Right of the consumers to know whether the food products, cosmetics and drugs are of non-vegetarian or vegetarian origin, as otherwise it will violate their Fundamental Right under Article 19(1) (a), 21 and 25 of the Constitution.

**(j) The Public Records Act, 1993<sup>64</sup>**

The Public Records Act, 1993 was enacted to regulate the management, administration and preservation of public records of the Central Government, union territory administrations, public sector undertakings, statutory bodies and corporations, commissions and committees constituted by the Central Government or a Union Territory Administrations. Record officers were appointed to take appropriate action against the unauthorized removal, destruction etc. etc. of public records in his custody<sup>65</sup>. All unclassified public records that were more than thirty year old were transferred to the National Archives of India or the Archives of the Union Territory as the case may be, subject to such exceptions and restrictions as may be prescribed to be made available to any bona fide research scholar<sup>66</sup>.

**(k) The Trade Mark Act, 1999**

This Act provides trade mark to the business concern for operating its business activities in different parts of the world. Section 148 of this Act states that these documents relating to trade mark of any concern should be made open for public inspection.

**(l) The Designs Act, 2000**

The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration. The designs Act, incorporates the principle of disclosure of a design<sup>67</sup> by the proprietor to any other person, in such circumstances as would make it contrary to good faith for

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<sup>63</sup> AIR 2003 Del 103

<sup>64</sup> Act No. 69 of 1993.

<sup>65</sup> Section 7 of Public Records Act,1993

<sup>66</sup> Section 12 of Public Records Act,1993

<sup>67</sup> Section 16 (Effect of Disclosure on Copyright) of the Designs Act, 2000.

that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person, other than the proprietor of the design, and the acceptance of a first and confidential order for articles bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance. During the existence of copyright in a design, any person on furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee may inspect the design in the prescribed manner<sup>68</sup>. Any person may, on application to the Controller and on payment of such fee as may be prescribed, obtain a certified copy of any registered design. On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of articles, and shall state the date of registration, and the name and address of the registered proprietor.<sup>69</sup>

#### **(m)The Semiconductor Integrated Circuits Layout-Design Act, 2000**

The Integrated Circuits Layout Designs or Topographies are protected like an Intellectual Property in different countries. The Integrated Circuits Layout Designs are the outcome of huge efforts by extremely skilled experts along with financial inputs. In India, these designs are protected by the Central legislation, the Semiconductor Integrated Circuits Layout-Designs Act, 2000. The Act was passed to give effect to provisions of Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) concluded under the auspices of United Nations. The Act prohibits the registration of certain designs which are not novel, has been utilized for business purposes wherever in India or abroad, not fundamentally unique and not differentiable from other designs registered. Where the design has been created by the intellectual labors of the inventor and is distinctive, such designs shall be considered original under the Act. The Act confers power on the Central Government to formulate rules to execute the provisions of the legislation. This Act is a novel legislation to grant protection for the scientific and technological inventions and to prevent from exploitation of such works by unauthorized user. Under this Act, documents are open to public inspection and any person may on an application to Registrar with fees, obtain a copy of any entry in the register.<sup>70</sup>

#### **(n) Geographical Indications of Goods (Registration and Protection) Act, 1999**

This Act seeks to provide for registration and better protection of geographical indications relating to goods. It excludes unauthorized persons from misusing geographical indications. This

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<sup>68</sup> Section 17 of the Designs Act, 2000

<sup>69</sup> Section 18 of the Designs Act, 2000

<sup>70</sup> Section 87 of the Semiconductor Integrated Circuits Layout-Design Act, 2000.

would protect the interest of producers, manufacturers and thereby consumer from being deceived by the falsity of geographical origin to economic prosperity of the producer of such goods and promote goods bearing geographical indications in export market. Unless a geographical indication is protected in the country of its origin, there is no obligation under the agreement under Article 22 of the TRIPs agreement for other countries to extend reciprocal protection. It is in this context that the Act was enacted. The Act has been divided into nine chapters. Registrar under the provisions of this Act should maintain:

- (a) an index of registered geographical indications.
- (b) An index of geographical indications in respect of which applications for registration are pending.
- (c) An index of the names of the proprietors of registered geographical indications, and
- (d) An index of the names of authorized users.<sup>71</sup>

The documents such as register, the indexes mentioned in Sec. 77 and any other document as the Central Government may specify be open to public inspection at the Geographical Indications Registry. Any person may, on an application to the Registrar and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any document.<sup>72</sup>

#### **(o) Protection of Plant Varieties and Farmers Right Act, 2001**

In compliance with the requirement under TRIPS, India developed its own sui generis system of law to protect plant variety. This law is the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PVPFR Act). The PVPFR Act 2001 came into existence to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants. It has been considered necessary to recognize and protect the right of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties. To accelerate agricultural development, it was felt necessary to protect plant breeders' rights to stimulate investment for research and development of new plant varieties. Such protection is likely to facilitate the growth of seed industry which will ensure the availability of high quality seeds and planting material to the farmers. The innovative Indian legislation has opened up interesting possibilities for developing and regulating breeders' and farmers' rights. So that, both are acknowledged and protected simultaneously. PVPFR Act deals with the protection of IPR for plant varieties by the process of registration. The various

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<sup>71</sup> S.77 of the GI Act,1999

<sup>72</sup> *Id.*,S.78



varieties which are covered under this Act are – new varieties, extant varieties, farmers’ varieties and breeders’ varieties. The Act provides for the registration of new varieties of plants by their breeders, provided they fulfill the criteria of novelty, distinctiveness, uniformity and stability. The breeders’ rights protection would include the exclusive right to produce, sell, market, distribute, import or export the variety or its propagating material and to license other persons to do the same.

For the purposes of this Act, a Register called the National Register of Plant Varieties shall be kept at the head office of the Registry, wherein shall be entered the names of all the registered plant varieties with the names and addresses of their respective breeders, the right of such breeders in respect of the registered varieties, the particulars of the denomination of each registered variety, its seed or other propagating material along with specification of salient features thereof and such other matters as may be prescribed. Subject to the superintendence and direction of the Central Government, the Register shall be kept under the control and management of the Authority. There shall be kept at each branch office of the Registry a copy of the Register and such other documents as the Central Government may, by notification in the Official Gazette, direct.

Any person may, on an application to the Authority or the Registrar, as the case may be, and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the Register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

#### **(p) Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.**

This Act clearly states that the contents of drugs and their mode of uses must be known to the patient and doctor.<sup>73</sup> Any other advertisement which goes to mislead the public must be restricted. Section 4 of this Act prohibits misleading advertisement regarding the true character of the drugs etc.

#### **(q) Code of Civil Procedure, 1908**

This Code also highlights the transparency and openness in the action of the court. Section 153-B of the Code clearly states that the place of trial of any suit shall be deemed to be an open court. The judiciary discharges its functions in the open court. Any member of the public can have free access to the court room and watch its proceedings. The parties to a case

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<sup>73</sup> SS.. 4,5,6 ,15 , Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

or their legal representatives or any other interested person can ask for a copy of relevant documents on payment of prescribed fee. Likewise interested persons related with the case file are entitled to have an inspection of the case file on payment of prescribed fee.<sup>74</sup>

The **Code of Civil Procedure** give a limited right of access to information under the provisions dealing with discovery/inspection<sup>75</sup> and admissions.<sup>76</sup> Any action in a court of law deals with disputed facts or facts in issue as they are known in legal parlance. Basically, information can be obtained by any of the parties in a civil suit which pertain to facts in issue. These are known as relevant facts. Sections 8 to 16 of the Evidence Act deal with what are relevant facts. Once an action is filed in court, information either in the form of answers to questions or documents can be obtained through the procedure of discovery. Information and documents can be obtained from the other party only to – (i) know the nature of the opponent's case, or (ii) prove one's own case. However, a party to the action is not entitled to information which constitutes exclusively the case of the opponent.

Under the **Code of Civil Procedure** discovery can be carried out by different methods, like interrogatories, production and inspection of documents, admissions, better particulars etc. which are outlined below:

Interrogatories are a series of written questions which are directed to the opponent to be answered on affidavit. An order of the Court is required to administer interrogatories to the opponent. If the opponent omits to answer or answer insufficiently, the party seeking discovery through interrogatories, can apply to the court, to direct the opponent party to answer further, either through an affidavit or oral examination.<sup>77</sup>

Discovery can also be done through production and inspection of documents. The party seeking discovery can file an application for a direction that the other party to file an affidavit of documents, i.e., affidavit stating the documents in his possession. On the basis of such affidavit documents can be inspected as well.

### **(r) The Companies Act, 2013**

The Companies Act, 2013 has many provisions for disclosure of information. Section 17 of companies Act 2013, clearly states that a copy of memorandum and articles of association must be given to the members of a company. If there is an alteration in memorandum or articles under this section, such alteration must be noted in the copy and the same should be made available to the members. Section 71(13) of this Act says that every member has the right to obtain copies

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<sup>74</sup> Order 11 Rule 8 Code of Civil Procedure, 1908.

<sup>75</sup> *Id.*, Order XI.

<sup>76</sup> *Id.*, Order XII.

<sup>77</sup> *Id.*, Order XII, Rule 1 to 11.

and inspect trust deed. Section 85 (2) states about the right to inspect copies of instruments creating charges and companies register to charges. Section 293 provides power to the creditor or contributor to inspect books to be kept by liquidator. Section 346 gives power to the creditor and contributor to inspect any work and papers of the company. Similarly inspection, production and evidence of documents kept by Registrar have been assigned under Section 399 of Indian Companies Act, 2013. Section 405 explains about the power of the central government to direct companies to furnish information or statistics. On the same lines the Securities and Exchange Board of India (SEBI) requires all advertisements of equity shares or mutual funds to caution the future buyers that the value of the share or the mutual fund is subject to market fluctuation.<sup>78</sup>

**(s) Delimitation Act, 2002**

This Act was enacted to ensure the accountability of an authority concern. Section 10 of this Act states about the publication of orders and their date of operation. People have the right to know about the duration of placing order and its actual operation. Section 11 of this Act goes to maintain delimitation order up-to-date.

**(t) PDS (Control) Amendment Order 2004**

In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government ordered to amend the Public Distribution System (Control) Order, 2001<sup>79</sup>, by inserting sub clauses in clause 4 which says:

“Any ration card holder desirous of obtaining extracts from the records of a fair price shop owner may make a written request to such owner along with deposit of the fee specified by the State Government and within fourteen days from the date of receipt of a request and the specified fee under sub-clause (4), the fair price shop owner shall provide such extracts of records to the ration card holder.”

**(u) Access to Information under MGNREGA, 2005**

In exercise of the powers conferred by Section 31(1) of the MNERGA, 2005 the Central has framed certain Rules in order to bring transparency in executing works.<sup>80</sup> Under the Rules, a Citizen’s Information Board must be put up at every worksite and updated regularly in the manner prescribed by the Government of India. The public must be able to access muster rolls

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<sup>78</sup> SEBI (Disclosure and Investor Protection Guidelines) 2000, para 6.2.1.2(v).

<sup>79</sup> Published in the Gazette of India Extraordinary, Part II, Section 3, Sub-section (i) vide G.S.R. number 392 (E) dated 29.06.2004 Government of India

<sup>80</sup>Operational Guidelines,2005,2013, MNERGA Audit of Scheme Rules,2011,Transparency and Public Accountability Rules ,etc.

on demand on the worksite for all days during all working hours. A copy of the sanction/work order must be available for public inspection at the worksite. Measurement records for each work and worker must be available for public inspection. The vigilance committee should check all works and their evaluation report will be submitted to the Gram Sabha during Social Audit in the manner prescribed by the Government of India.<sup>81</sup> Rules are there for “Voluntary disclosure” of information at Work-site, Gram Panchayat, Block, District, State and National level<sup>82</sup> .

The Rules allow scrutiny of all records of ongoing works in the Gram Panchayat by workers/households provided employment under NREGA, free of cost, at the location where the records are in use or stored (for instance, the Gram Panchayat Bhawan). They will be allowed to check the records anytime during the working hours of Gram Panchayat Office immediately on oral/written application. The Gram Rozgar Sahayak will note the details- Job Card ID, date of scrutiny and name of records checked by the household/individual. For all records of previous works done shall be made available within 24 hours, but not later than three working days from the time of oral/written application for scrutiny. Scrutiny will include the right to inspect works or records and copy by hand any part of the records asked for. In case the records are not furnished, the reasons will be recorded and the applicant may file a complaint with the Programme Officer.<sup>83</sup> Any information regarding the work can also be obtained through RTI Act, 2005.

#### **(v) Individuals Responsibility to Inform under Certain Laws**

Apart from the responsibility of the State to provide information to an individual, we do have certain Statutes where an individual is also bound to give information to another. A person is not obliged to give information to another except where the law has placed such an obligation. If a person withholds information knowingly and it causes harm or injury to another person, it may amount to an offence under the penal law.<sup>84</sup> Not giving information, may affect the validity of certain transactions. Such liability is implicit in the law of contract. A contract comes into being when a proposal is accepted by another person with free consent. A free consent exists when all facts that matter for giving free consent are revealed in the proposal. If a person knowingly does not disclose something of vital nature to the other contracting party, the other party may avoid the contract on the ground that his free consent has not been obtained.<sup>85</sup> In the **Sales of Good Act, 1930**, the seller must disclose all such faults in the sellable goods, which the buyer could not

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<sup>81</sup> Rule F

<sup>82</sup> Public Access to Information Rules 1-5, [http://nrega.nic.in/Trans\\_acc\\_ability.pdf](http://nrega.nic.in/Trans_acc_ability.pdf) . (accessed on 30.6.2018)

<sup>83</sup> *Id.*, Rule 6

<sup>84</sup> Indian Penal Code, Section 321 and 322.

<sup>85</sup> Indian Contract Act, 1872, Sections 17 and 18.

have discovered with due diligence.<sup>86</sup> A similar provision exists in Section 55(1) & (5) and Section 108(a)(K) of the Transfer of Property Act 1882.

### **(w) Information through Parliament, Judiciary and Press**

Admittedly, today in the governance of a country, Parliament plays a significant role. Being the people's highest political forum, the role as well as responsibility of Parliament are closely related to the needs of the people and therefore, in their functioning they mirror the urges and aspirations of the people, their moods, and their choice or opinion. Deliberation in Parliament constitute, the most enlightened means of public education not only on political but on all questions of public importance. In a democratic set-up, parliamentary information is available through different means. People have access to the proceedings of Parliament as the sessions of both the houses are generally open to the public except under certain conditions; the parliamentary proceedings are published from time to time; the questions asked by the Members of Parliament from Ministers and the Minister's answer on them come to the public through various means of communication like Press, Radio and Television. In assessing the opinion of the people and informing them, the mass media aids the Parliament. In fact, it lends a powerful support to the Parliament by communicating their deliberations to the people. Informed and enlightened citizenry is a sine qua non for the effective and efficient working of the democratic set up.

In order to ensure the confidence of the public in the fair administration of justice, our judiciary is working in a transparent manner and it is accountable towards people and free from fear and favour. People can participate in judicial functioning through regular information disseminated by the mechanism of the judiciary itself and other means of communication. The free flow of information is the basis of the free flow of understanding. If one does not know the other, the one cannot understand the other. Democracy can thrive not only under the vigilant eye of its legislature, but also under the care and guidance of public opinion, and the press is, par excellence, the vehicle through which opinion can become articulate. Its role consists not only in reflecting public opinion, but instructing it and giving it proper orientation and guidance. Currently under the provisions of proactive disclosure<sup>87</sup> many government departments have their own websites where they disseminate information about their functions, contact details, project specific information etc. including annual reports providing information on activities and finances. These reports can be easily accessible through ICT means.

## **6. CONCLUSION**

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<sup>86</sup> Sale of Goods Act, 1930, Section 16.

<sup>87</sup> S.4 RTI Act,2005

The concepts of Open Government and Right to Information are inter-related. The viability to access Government information is the prime criteria in deciding the openness of a Government. Participation in Government decisions by the people is regarded as an important aspect of democracy and if people are desisted from participating in Governmental affairs, a healthy democracy cannot be said to exist. Consequently people must have the information as to what is going on in the Government. A modern democratic State is answerable and accountable to its people, the people are entitled to know what policies and programmes, how and why, are being framed and followed by the Government. An important feature justifying the openness in Governmental activities is that, being an activist entity, the Government accumulates a vast armory of powers in a welfare State. Out of these powers, from Defense to Education, from External Affairs to Poverty Elevation, the Government frames and implements collective policies and schemes. These powers are used to affect economic interests and the personal liberty of the individual. Therefore, it is extremely essential that these powers have to be exercised for public good, not improperly and for the purposes of which the powers are conferred.<sup>88</sup>

Practice of suppression of facts and shrouding official papers in the veil of secrecy continues in India even today in one form or another. In India there are number of Statutes which license secrecy. Some of the provisions of such laws are vague and ambiguous which may give rise to arbitrariness and excessive discretionary powers to the government authorities. Such an environment will restrict the growth and development of citizens as well as society. Even though many laws favor secrecy as guiding principle yet there is silver lining as well.

We have certain laws which mandate disclosure of information but the effective implementation of these laws will not be possible until or unless the government and its authorities realize that it is there sincere responsibility to work in a transparent and accountable manner. In most of the laws it has been observed that information is only available on demand and the laws do not sufficiently stress to give such information proactively. With the information being available voluntarily, the time and energy of both the information seeker and the information provider are saved and chances of misuse are substantially reduced. It is also essential to review the way the Public Authorities conduct their business. So there should be more focus on proactive instead of reactive disclosure mechanism. Right to Information Act, 2005 is an effective watchdog ensuring all those coming in purview of the Act to work in accordance with rules and regulations, without any irregularities. However, stricter implementation of this law requires not only political will but also active civil societies, RTI activists and few key democratic features, such as respect for the rule of law. Currently, the Right to Information Act, 2005 in India is passing through a decisive phase; much more needs to be done to facilitate its growth and development. Mere

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<sup>88</sup> Adv. K.P. Pradeep, 'The Right to Information - New Law and Challenges', p.1 [www.rti.kerala.gov.in/articles/artOOleng.pdf](http://www.rti.kerala.gov.in/articles/artOOleng.pdf)

protest against the lack of implementation of this law alone is not sufficient, one needs to encourage this initiative taken, for the law to grow and mature. A change in the attitude of the people is also required for the success of the RTI Act in India. Instead of keeping any suspicious attitude towards the Act, people should be convinced with its holistic approach and meritorious aspect. The civil society must continue building pressure on public authorities to ensure the implementation of the Act in letter and spirit.

In a country with high level of illiteracy and poverty implementation of these in true spirit is itself a big challenge. Most of the laws are usually published in law books, few people outside legal circles have access to such legal information. Illiteracy, economic barriers, language barrier, social taboos and lack of zeal among citizenry may lead to obstacles in gaining requisite levels of legal literacy. Author feels that education is the most vital factor in the use of the right to access to information. The more the people are educated, the more effective is the right to information. Statistically in India about 25 percent of the population is illiterate and about 22 percent of the population is below the poverty line. The rate of literacy is much lower in certain castes, women, ethnic and regional groups. Though, the right to education has been declared to be a fundamental right.<sup>89</sup> However, it is yet to be realized in reality. The more illiterate people, the more worsening situation of the right to access information. These illiterate people cannot fully use the fruit of the right to information. Therefore, urgent need is to ensure effective education system throughout the country so as to make use of the right to information effective. The main objective of the Government should be to increase public awareness; encourage citizen involvement; and increase transparency within the government. Advertisements, printing and distribution of booklets, pamphlets, walling, etc. may be resorted to spread the aims and objectives of RTI among the people. A campaign on the right to access information should include campaigning against the various laws and practices that prevent access to information and/or calling for their amendments.

Meaningful democracy can be best ensured by giving access to the individual to Governmental information and not shrouding in secrecy how the Government exercises its power in individual cases. Although ,every type of information cannot be made public, withholding of information can be justified only on the grounds of protection of privacy of the individual, trade secrets, vital financial and management matters in the fields of business, official secrets relating to affairs of state, national security, foreign relations, privileged communications, morality and the like. An ideal democracy has its own flaws and everything can not be disclosed to everybody. Hence the

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<sup>89</sup> Constitution of India, Article 21-A.

need of the hour is to strike a balance between secrecy and openness.<sup>90</sup> However, there is still a very wide scope for opening a wide sea of information, vital for the social and economic welfare of the ordinary people and welfare of the mankind in general so as to prevent the misuse of the power by the State.

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<sup>90</sup> Abhishek Malhotra and Gaurav Aggarwal, "Technology & Jurisprudence", *Central India Law quarterly*, 1998, p. 312.