
UNIT 1 RIGHT TO INFORMATION: EVOLUTION, CONCEPT, ACHIEVEMENTS AND LIMITATIONS*

Structure

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1.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the origin and evolution of right to information;
- Explain the conceptual genesis and philosophical basis of right to information;
- Distinguish between the right to information and freedom of information;
- Describe the importance of right to information as a tool of social transformation and its landmark achievements for good governance;
- Highlight the restrictions that may be placed on the right to information; and
- Suggest necessary measures to realise the objectives of right to information.

*Contributed by Prof. (Dr) Preeti Misra, Head, Department of Human Rights, School of Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow, Uttar Pradesh.

1.1 INTRODUCTION

In the democratic societies, information is power in the hands of common people. The democracy expects openness and openness is a concomitant of free society. The openness is possible only when the “right to know” can be exercised by the people. In a democracy people are sovereign, they have the right to know what their representatives are doing. Hence, information is indispensable for the transparent and accountable functioning of a true democratic government. It provides safeguards against abuses, mismanagement and corrupt practices. It is also beneficial to the government, as openness and transparency in the decision-making process assist in developing citizen's trust in governmental actions. More than 177 years ago, James Madison, the fourth President of the US said, “*A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance; And a people who mean to be their own governors, must arm themselves with the power which knowledge gives*” (Letter to Edward Livingston quoted in Pal, 2009).

Freedom of speech, freedom of the press, freedom of expression and freedom of information are four different notions, though related to each other. “*Although they are related to similar things, they are not identical*” (Martin, “Media Law” quoted in Ryder, 2006). Freedom of speech means ability of the individual to express and communicate his ideas.

Freedom of expression contains many of the basic elements of free speech. In its broader and expansive notion, it includes freedom to speak, write, print and publish. Freedom of expression may also include the communication of ideas or opinions through gestures. Freedom of information is quite different from freedom of speech, freedom of the press or freedom of expression. Freedom of information means individual's ability to gain access to information in the possession of the State authorities. It is the right of the individual to be informed about the activities of his State-past, present and future. The phrases “access to information” and “freedom of information” have been used synonymously. In the present Unit, we are going to discuss evolution and concept of the right to information, jurisprudential aspect of this right and its philosophy. We will also analyse the achievements and limitations of the Act.

1.2 RIGHT TO INFORMATION: EVOLUTION

Highlighting the importance of right to information, in its very first session in 1946, the UN General Assembly adopted Resolution 59 (1) stating, “*Freedom of information is a fundamental human right and the touch-stone of all the freedoms to which the United Nations is consecrated*”. Thereafter,

governments around the world were increasingly making available more information about their activities. Over fifty Countries around the World adopted comprehensive Freedom of Information Acts or Right to Information Acts to facilitate access to records held by governmental bodies. Various factors such as international pressure, modernisation, corruption and scandals, recognition of right to information as a human right etc. have been responsible for this wave.

The phrase “Freedom of Information” owes its origins to the United States. In the later part of the 20th Century, US Supreme Court “interpreted the First Amendment to the Constitution to include a right to access of information. Till that time, the right to information had only been interpreted to indirectly guarantee the people’s right to know through the right of freedom of speech and the press” (Aroopagita, 2009). In United States the right to information can be traced through the cases of *United States v. The Progressive Inc* (467 F. Supp. 990 (1979)) and *New York Times Co. v. United States*(403 U.S. 713 (1971)), “wherein District Court Judge Robert W. Warren granted a preliminary injunction against the publication of an article. Acknowledging “the injunction will infringe upon (the public's) right to know and to be informed”. Judge Warren concluded, “this Court can find no plausible reason why the public needs to know the technical details about the hydrogen bomb construction to carry on an informed debate on this issue”. However, Sweden was the first Country, to enshrine a right to access of information in 1766. The oldest freedom of information law is called the Swedish Freedom of the Press Act, though its rights to access provisions are not limited to the press at all. Right to information was introduced to the rest of the world only after two centuries.

The concept of an open government directly flows from the right to know, which is implicit in the fundamental right to freedom of speech and expression, guaranteed under Article 19(1) (a) of the Indian Constitution. In a democratic form of Government, disclosure of information with regard to the functioning of Government must be the rule. Secrecy can only be an exception justified only where the strict requirement of public interest so demands. The Courts can satisfy protection of secrecy only on the ground of requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.

The freedom of speech and expression includes right to acquire information and disseminate it. It is necessary for self-expression, which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it, that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Freedom of speech and expression includes freedom of the press.

The freedom of the press in turn includes the right to circulate and also to determine the volume of such circulation.

The Right to Information is indisputably a fundamental right. According to Sarbjit Sharma and Krishan Gopal (2006), right to information is a necessary tool for social welfare. They point out that this right is a potent tool for countering many of the social evils from society and for protecting fundamental rights of the people. The RTI is also necessary for protecting civil liberties, just to quote as example, by making it easier for civil society groups to monitor wrong doings like encounter killings or the abuse of preventive detention legislation.

In India a nationwide concerted campaign by Mazdoor Kisan Shakti Sangathan (MKSS), National Campaign for People's Right to Information (NCPRI), Press Council of India (PCI) & others led to the demand for right to information. The legislation saw the light when Parliament passed Freedom of Information Act, 2002. It was for the first time, this right was recognised by the legislature of India, but it could not become a statute as it was not notified by the government. The Right to Information Act, 2005 that replaced the Freedom of Information Act, 2002 is a significant development in the realm of the Constitutional and Administrative law and a means of social audit in India. It may be stated that the RTI Act of 2005, "*is merely the legislative implementation of the constitutional norm of the right to know available to the people against the Government as a part of democratic structure of the Constitution*" (Rai, 2011).

The Government of India enacted the Right to Information Act, 2005, which is considered to be one of the most important laws in furtherance of good governance. It contains all the rules and procedures regarding the citizen's right to information from the government, inspect government documents, and seek certified photocopies thereof. The RTI Act of 2005 mandates timely response to citizens requests for government information. The RTI is a part of fundamental rights under Article 19(1) of the Constitution. Article 19(1) specifies that every citizen has freedom of speech and expression. Any person who is the citizen of India or Non-Resident Indian (NRI) can file Right to Information requests. It extends to whole of India including the State of Jammu and Kashmir after the revocation of Article 370.

It recognises the people's right to information, which has been proclaimed by numerous judicial pronouncements as a fundamental right enshrined in our Constitution. Enactment of the Right to Information (RTI) Act, 2005 is a historical step. It substituted the culture of secrecy and control with transparency and participation. The RTI Act not only covers the Central and State Governments, but also the grassroots democratic bodies and the

institutions, which receive Government grants. The RTI Act, 2005 empowers citizens with information for ensuring transparency, accountability and good governance. The Act also casts an obligation on every public authority to provide information *suo motu* to the public and to publish annually various particulars concerning the organisation including the categories of documents available with it.

The Right to Information Act, 2005 defines Information as “any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports papers, samples, models and data material held in any electronic form”. It also includes information relating to any private body, which can be accessed by a public authority under any other law for time being in force.

According to the RTI Act, 2005 right to information means, “the information accessible under this Act, which is held by or under the control of any public authority and includes the right to-

- i) inspection of work, documents, records;
- ii) taking notes, extracts or certified copies of documents or records;
- iii) taking certified samples of material; and
- iv) obtaining information in the form of diskettes, floppies, tapes, videocassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device”.

Access to information is often called, and rightly so, as the “oxygen for a democratic society”. Citizens are gradually becoming more aware of their right to information. The Act has been used as a tool to hold elected representatives accountable for the manner in which they spend public funds. In this way, more than the law, the Right to Information Act is a process, a tool, a concept and a cultural approach to life.

1.3 RIGHT TO INFORMATION: CONCEPTUAL ANALYSIS

Etymologically, the term “information” is derived from the Latin words “Formation” and “Forma”, which means “giving shape to something and forming a pattern, respectively. Being a matter related to speech and expression, information is known as something which removes vagueness in ideas and adds something new to our awareness” (Kumar, 2009).

E. Westermarck found, “all the important differences of moral opinions between savage people and civilized nations depend on knowledge or ignorance of facts”. Among the “seven goods necessary for human being and one of them is knowledge”. Francis Bacon long ago pointed out, “knowledge is power that comes from information”. Similarly, the theory of knowledge

propounded by Descartes is based on the “method of doubt” Finnis (2011). His “method of doubt pre-supposes that data and information is to acquire knowledge for the clarification of doubt that one has. Unless we have access to information we cannot acquire knowledge and there can be no wisdom without knowledge”. **John Locke**, who was an empiricist, did not agree, “man is a divine creature having predetermined ideas while coming into this world. As an empiricist he believed that knowledge is the product of experience. For him, no man's knowledge can be segregated from his experience. He was of the view that man is born with an empty mind. There are no such things as innate ideas and moral precepts. Beginning empty, the human mind acquires knowledge through the use of the five human senses and through the process of reflection. The empty mind of the human being is filled up by the information it receives and the interpretation it makes on the basis of the received information. One can infer that the people who do not have access to information cannot judge right or wrong because their mind cannot be nurtured properly. For this reason information is essential to enrich human mind”(cited in Mahajan,2000).

John Milton in his book "*Areopagitia*" develops certain arguments, which are valuable to understand the philosophical foundation of the right to information. Milton was of the opinion, “the licensing order cannot possibly achieve its preferred end. Truth is strong and will prevail without the help of the censor's coercive assistance. He says that truth is strong, next to the "Almighty". Truth in Milton's universe is considered to prevail in due time. The "*Areopagitia*" exalts the importance and dignity of learning. He calls truth as one richest product. Similarly, he valued many forms of secular knowledge, which come from divergent source of information. He believed that each citizen must use sovereignty over one's mind and must use that mind to help energise the society and hold its leader accountable” (J. Locke, Two Treaties of Civil Government, cited in Mahajan, 2000).

Writings of John Stuart Mill also supports the right to information. From his writings one can conclude, “without information or resources to nourish the mind no one can judge something as right or wrong”. Mill in his book *On Liberty* argues, “a person should endeavour to know the ideas of his opponents with greater imagination and understanding than he devotes to knowing his own” (John Stuart Mill, "On Liberty" reproduced in Morris, 1971). Thomson Emerson also talked about the “role of discussion”. He was of the opinion that “suppression of ideas promotes inflexibility and substitutes force for reason” (Emerson, 1976). The powerful argument for openness is also found in the writings of Madison. He was of the opinion, “meaningful participation in democratic processes requires informed participants. Informed participation is possible only if there is an access to information. Excessive secrecy in the government reduces the chances of the

citizens to be informed which create hindrance for the meaningful participation”(Barlow, 1994).

Public opinion is indispensable to establish a just system of governance based on popular consent. Public opinion created by information is only the soul of democracy. There is a very good nexus between public opinion and access to information. If there is no access to information, public opinion cannot be effective because information is the tonic for the human mind and in the absence of it the human mind cannot form effective opinion.

John developed the concept of information very brilliantly. He conceptualised information as follows:

- a) Information is an activity
- b) Information is a life form
- c) Information is a relationship

“Information is an activity because it is something that happens in the field of interaction between minds and objects or other pieces of information. It is generated in human mind and it is movable” Barlow (1994).

Toffler is of the view, “information is conveyed by propagation but not by distribution”. Similarly “information has some characteristics that make it comparable to a living being. Information replicates one after another, and wants change like a living being” (Ibid). With the lapse of time the value of information decreases and finally it dies like the farm products in general. Likewise “information is a relationship because it has value. Therefore, we say that information is money. Most of the money in the informative world is in ones and zeros. Information has become as fundamental to the creation of modern wealth as land and sunlight once were”(Toffler, 1981).

According to Ryder, right to information is an access to information. He stated, “Access to information may be defined as the ability of the citizen to obtain information in the possession of the state”. He says, some states provide for access in their Constitution and Laws, many do not. Even where access is recognised, it is invariably subject to limitations Ryder (2006).

“Information is power”, has been one of the most common sayings. On the other hand, the absence of adequate and accurate information can collapse economies, cripple governments and paralyse 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 ways in which powers are exercised. The principles that strengthen good governance are openness, participation, accountability, effectiveness and coherence. If the people are well informed, they will be more vigilant and hence, democracy will 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. Information is an important element for a fair, free public administration and transparency in governmental actions. This could be obtained only through empowering the people to have access to official information. To diminish information to people is to diminish their participation in Government. As Jefferson said, "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" (Mathew, 1979). In real sense, the 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? "Modern democracy has given valuable concepts and instrumentalities suitable for social transformation. Inspired by Constitutional ideals a number of specific legislations have contributed to welfare ideology of the Government and have led to social transformation. The concept of right to information, backed by the people's will and definite legal base" (Bhat, 2009), has empowered the people for social transformation in the direction of good governance.

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) Discuss the origin of right to information in India.

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2) Elaborate upon the right to information as incorporated under Article 19(1)(a) of the Indian Constitution.

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3) Discuss the concept of right to information and distinguish freedom of expression from freedom of information.

1.4 RIGHT TO INFORMATION: ACHIEVEMENTS

The Right to Information Act, 2005 aimed at ensuring maximum disclosure with minimum exemptions. The Act has been very impactful due to its brief and crisp construction. Every citizen is empowered to get information. All that one need to do is to make a request in writing asno fixed proforma is required, pay minimal fees and specify the particulars of the information sought. Sub-Section (2) of Section 6 specifically says that an Applicant, making request for information, is not required to give any reason for requesting the information or any other personal detail, except those that may be necessary for contacting him. The Act has brought many documents and details in public domain that would have otherwise remained bundled in files. It structured and strengthened many litigations, gave birth to many RTI activists. In 15 years of its implementation, reels of pages have been photocopied and have reached the citizens through the tool of RTI” (Megha, 2021).Precisely, the achievements of RTI may be summarised as follows:

- **Means of Social Audit**

The Right to Information is **a means of social audit**. It empowers to carry out social audit of the governmental organisations by obtaining information on work executed and that prevailing on the ground to find out the gaps in provisions of services. It also brings to light the acts of omissions and commissions including cases of inaction, harassment, extortion, corruption or abuse of power and authority on the part of the officials of various departments of the government, its local bodies, autonomous organisations/undertakings and other institutions owned or substantially financed by the government including non-governmental organisations.

- **Tool of Social Transformation**

In any society transformation can be brought by an informed citizenry. RTI is an instrument through which information regarding policies and programmes of the Government, decisions taken on various issues of public importance lying in the possession of public authorities can be unraveled. “Right to information is not only a human right but also an essential tool of democracy” (Union of India v. Assn. for Democratic

Reforms (2002) 5SCC294; People's Union for Civil Liberties (PUCL) v. Union of India (2003) 4 SCC399). It helps in combating corruption and misuse of power. It brings good governance through accountability and transparency and thus strengthens democratic institutions. Judiciary recognised "freedom of press at the heart of social and political discourse and played a definite role in the process of social change (Indian Express Newspapers v. Union of India, (1985) 1 SCC 641: AIR 1986 SC 515; Union of India v. Motion Picture Assn. (1999) 6 SCC 150). Judiciary has also played a key role in bringing out social dimension of the RTI by protecting rights of deprived sections of the society.

In a significant order, the Central Information Commission (CIC) partly allowed a wife's appeal, seeking information about her husband's income under the Right to Information Act, 2005. Information Commissioner, while relying on certain High Court orders where it was held that a wife is entitled to know what remuneration her husband is getting, directed the Income Tax Authority to provide the Appellant wife with "generic details" of the net income of her husband. The CIC observed, "*In a litigation, where the issue involved is of maintenance of wife, the information relating to the salary details no longer remain confined to the category of personal information concerning both husband and wife, which is available with the husband hence accessible by the wife*". Further the Commission, however, denied, "*the information sought by the appellant regarding copies of income tax returns of her husband, etc. as it belonged to personal information of third party, which cannot be disclosed under Section 8(1) (j) of the RTI Act*" (Indian Express Newspapers v. Union of India, (1985) 1 SCC 641: AIR 1986 SC 515; Union of India v. Motion Picture Assn. (1999) 6 SCC 150).

- **Uncovers Scams And Anomalies**

Adarsh Society Scam: A six-storey building for the widows of Kargil War, 1999 Martyr turned into a 31-storey called Adarsh Housing Society. Located in Mumbai's posh residential area in Colaba soon became the abode of politicians, bureaucrats and top military officers. It was exposed by the RTI activists Simpreet Singh and Yogacharya Anand. They revealed that the piece of land doesn't belong to the state government but to the Union Ministry of Defence and culminated in resignation of AshokChavan, the then Chief Minister of Maharashtra.

Delhi Demolitions by MCD

Parivartan, an NGO working towards bringing transparency and accountability in governance, demanded through the RTI that the entire process of demolitions by the Municipal Corporation of Delhi (MCD) should take place with complete transparency. Pointing to a seeming confusion about the definition of "demolition", Parivartan noted that whereas some

structures were being completely razed, others were being let off with minor damages. In addition, the action taken by the MCD against misuse of residential premises for commercial purposes did not seem to be uniform. Whereas, some structures have been demolished, others, including some big showrooms, were let off with just sealing. In the RTI it was asked -What guidelines govern such decisions? Absence of any such clear guidelines could be a fertile ground for further corruption. The MCD needs to make its stand clear on all these issues. The people have a right to know all these informations under the Right to Information Act. (For analysing, in detail, the achievements of RTI, refer to Unit 4&5 of Block 2)

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

- 1) Discuss the achievements of right to information as a tool of social transformation.

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- 2) Enumerate some success stories brought by the Right to Information Act, 2005 for eliminating corruption from the Indian society.

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1.5 RIGHT TO INFORMATION: STATUTORY LIMITATIONS

It is the general observation from the study of the RTI Act, 2005 that no one should be restricted to get any information, which is significant for protecting public interest and ensuring transparency and accountability of public authority. It is also obvious from the study that proactive disclosure policy reduces the burden of the RTI Act, 2005 and it is really very helpful to make it more effective and contributory in the general interest of any country. But, it has also been found from the study that there are certain exemptions where

informations are restricted to be disclosed and people are not entitled to get it, because it may affect the national interest of the country adversely. Similarly, exclusive provisions have been made under different legislations in respect of right to information and proactive disclosure policy of the public authority.

Here, we will find out and highlight those provisions, which impose restrictions on disclosing the information by public authority in addition to the exemptions given in RTI Act, 2005 and in the Constitution.

- **Article 19(2) of the Constitution**

Right to Information (RTI) has been accepted as a fundamental right of citizens under Article 19 (1) (a). This covers right to free speech, right to publish and right to information. A citizen does not have to give reasons for exercising any of these rights. The fundamental right can be limited only by reasonable restrictions under a law made for the purposes mentioned in Article 19 (2) of the Constitution. The restrictions are for protecting sovereignty and integrity of India, friendly relations with foreign countries, public order, decency or morality. The burden is on the authority to justify the restriction. Public order is not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and expression on the ground that public safety is endangered. Unlike in the American Constitution, limitations on fundamental rights are specifically spelt out under Article 19 (2) of our Constitution (Secretary, Ministry of Information and Broadcasting, Govt, of India v. Cricket Association of Bengal, (1995) 2 SCC 161: AIR 1195 SC 1236).

- **Non-disclosure Clause : Section 8 of the RTI Act, 2005**

The Right to Information (RTI) Act, 2005 itself provides for certain exemptions, which pose limitations on the people's right to receive information. Non-disclosure clause of Section 8 discharges public authorities from the obligation to provide information to citizens. Section 8 is the most important part of the Act and it is very simple for officials to reject the request for information if it falls under any of the long, general and ambiguous clauses of exemptions. This section is general and can be interpreted in either way. Sub-Section (1) lists out the specific exemptions to disclosure, namely, information that a requestor may not claim as a matter of right. Sub-Section (2) provides for the disclosure of even exempt information when public interest in disclosure outweighs the harm to the protected interests. Sub-Section (3) limits the operation of seven out of the ten exemptions up to 20 years for a given set of records. The exemptions relating to national security, relations with foreign Governments, Parliamentary and Legislative privileges and

Cabinet documents apply for an indefinite period of time. A proviso is inscribed at the bottom of Section 8(1).

The complete text of Section 8 along with the proviso is reproduced below:

Section 8(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

- a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- b) information, which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- f) information received in confidence from the foreign Government;
- g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- h) information, which would impede the process of investigation or apprehension or prosecution of offenders;
- i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters, which come under the exemptions specified in this section shall not be disclosed;

- j) information, which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless

the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

- 2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
- 3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6, shall be provided to any person making a request under that section:

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

- **Non-obstante clause : *Section 22 of RTI Act, 2005***

To ensure that other laws and constraints could not be used to deny information to the real rulers of democracy-the citizens, legislature has enacted a Non-obstante clause in Section 22 of the RTI Act, which provides, "*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act*".

This clearly means that the RTI Act will prevail over all laws and rules, including the Official Secrets Act as far as providing information under RTI is concerned. It does not mean that the Official Secrets Act or other acts are repealed. When a request for information is filed under the RTI Act, it can be denied only if the provisions of the RTI Act provide for an exemption.

- b) **Limitations under Other Statutes**

- ***Limitations Under Official Secrets Act (OSA), 1923***

The Official Secrets Act was first enacted in 1923 and was retained after Independence. It is India's Anti-Espionage Act. The law, applicable to government servants and citizens, provides the framework for dealing with espionage, sedition, and other potential threats to the integrity of the nation. The law makes spying, sharing "secret" information, unauthorised use of uniforms, withholding information, interference with the armed

forces in prohibited/restricted areas, among others, punishable offences. *Section 3 of the Act is basically concerned with the provisions of penalties for spying and Section 5 is concerned with wrongful communication of information which is also a punishable offence.* If guilty, a person may get up to 14 years' imprisonment, fine, or both. *Section 14 of this Act provides power to the court for excluding public from proceedings.*

The information could be any reference to a place belonging to or occupied by the government, documents, photographs, sketches, maps, plans, models, official codes or passwords.

It clearly states that any action, which involves helping an enemy state against India is punishable. It also states that one cannot approach, inspect, or even pass over a prohibited government site or area. According to this Act, helping the enemy state can be in the form of communicating a sketch, plan, model of an official secret, or of official codes or passwords, to the enemy. The disclosure of any information that is likely to affect the sovereignty and integrity of India, the security of the State, or friendly relations with foreign States, is punishable by this Act.

Another contentious issue with the law is that its Section 5, which deals with potential breaches of national security, is often misinterpreted. The Section makes it a punishable offence to share information that may help an enemy state. The Section comes in handy for booking journalists when they publicise information that may cause embarrassment to the government or the armed forces.

However, in the OSA, information from any governmental office is considered official information; hence it can be used to override freedom of information requests. The OSA does not define "secret" or "official secrets". Public servants could deny any information terming it "secret" when asked under the RTI Act. Under the OSA, confidentiality is the norm and disclosure is the exception. This tendency was challenged when the Right to Information Act came into existence. This has drawn harsh criticism.

The Second Administrative Reforms Commission (SARC) Report, 2006, suggested that the Act should be substituted by a chapter in the National Security Act that incorporates the necessary provisions. The reason: it had become a contentious issue after the implementation of the Right to Information Act.

- ***Indian Evidence Act, 1872***

This Act provides that evidence relating to affairs of the state, official records and professional communications are restricted for disclosure to

the general public. Section 123 of this Act says that no one shall be permitted to give any evidence derived from unpublished official records relating to affairs of the state, except with the permission of the officer at the Head of Department concerned, who shall give or withhold such permission as he or she thinks fit.

Sections 124, 125 and 126 of the Indian Evidence Act provides for privileged communications. Section 124 of this Act says that no public officer shall disclose communications made to him in official capacity, if he considers that the public interest would suffer by the disclosure. Section 125 bars communication of information by the Magistrate, Police Officer or Revenue Officer relating to the offences committed by any person. Section 126 is concerned with professional communication relating to the professional persons such as Barrister, Attorney, Pleader or Vakil to their client.

Exception to section 126 states that communications for illegal purposes are not protected from disclosure. Besides no restrictions are justified, if public or national interest so demands (The Indian Evidence Act, 1872).

- **Central Civil Services (Control) Rules and All India Service (Conduct) Rules**

The unauthorized communication of information by any government servant is highly prohibited. The Central Civil Services (Control) Rules as well as All India Services (Conduct) Rules have the same version. This rule clearly states that no government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorized to communicate such document or information.

- **The Atomic Energy Act, 1962**

This Act has also some provisions, which put restrictions on disclosure of information as found from the study of the same. Section 18(1) puts restrictions on disclosure of certain information. The study of this section states that the central government may by order restrict the disclosure of the information relating to document, drawing photograph, plan, model of an existing or proposed plant used for the purpose of producing, developing or using atomic energy or method of operation of any such plant. The section further states that this information cannot be disclosed by any person without taking authority from the central government for the same.

Thus, it is crystal clear that some informations under this Act are of strategic nature and are restricted to be disclosed but there is no restriction on other information available under Section 18(3) of this Act.

- **The Information Technology Act, 2000**

This Act intends to regulate the electronic data. It is the view of the Act that the data collected through computers about any organisation should be maintained and saved properly and the same may not be disclosed without taking their consent otherwise it will be treated as punishable offence. Section 72 of this Act prescribes penalty for the breach of confidentiality and privacy of the data. This section clearly states that one should save and maintain electronic record, book, register, correspondence, information document or other material as per the provisions of this Act and the same should not be disclosed without taking consent of the person concerned, otherwise, the accused person shall be punished with imprisonment for a term, which may extend to two years, or with fine which may extend to one lakhs rupees, or with both.

Check Your Progress 3

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) Elaborate the Statutory provisions relating to restrictions on disclosure of information under the RTI Act, 2005 in India.

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2) Discuss the restrictions that have been imposed by the Official Secrets Act 1923 and other statutory laws on the disclosure of the information.

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1.6 APPRAISAL

We all know that there are provisions under the Indian Constitution regarding Right to Know and Right to Information, which have been spelt out from time to time. In addition to these, there are number of legislations, where Right to Information and disclosure of public policy have been explained. Despite Constitutional provisions and provisions in other legislations of India, a separate RTI Act was enacted in 2005, as provisions existing under the Constitution and other legislations including Freedom of Information Act, 2002 were not very effective in justifying the transparency and accountability in action by the public authorities. However, the RTI Act, 2005 is far better and open than Freedom of Information Act 2002 as there were many restrictions and the provisions were ambiguous. Though the RTI Act, 2005 also have restrictions under section 8 but these are less in complexity and more in number than under the Freedom of Information Act, 2002. Section 8 of the RTI Act, 2005 deals with exemptions to the right to information. In recent times many cases of misappropriation, misuse and careless use of public funds in the Government have been brought to the light by the Act of 2005. To counter corruption, it is essential that there should be complete transparency in all public dealings. Like any other legislation, the RTI Act also is not free from criticism of misuse. However, against a few instances of misuse of the RTI Act and wastage of time of officials in answering RTI queries, there would be hundreds of instances where information is withheld by public authorities without any justifiable reason. The RTI is bound to bring about a more careful dealings. This is bound to bring about a more careful utilisation and application of funds. In addition, transparency in government functioning will also help to hold people accountable for their mishandling of public time and money.

1.7 CONCLUSION

This particular Unit highlights the origin and concept of right to information. It discusses etymology of the term “information”. It also analyses the evolution and development of concept of information, freedom of information and right to information. “Information” is known as something, which removes vagueness in ideas and adds something new to our awareness. In 1946, the UN General Assembly adopted a Resolution, "*Freedom of information is a fundamental human right*". The US Supreme Court “interpreted the First Amendment to the Constitution to include a right to access of information. The oldest freedom of information law is called the Swedish Freedom of the Press Act. In Indian context, the right to information is a “facet of speech and expression” as enshrined in Article 19(1)(a) of the Constitution of India. The Right to Information is indisputably a fundamental right. This Unit further analyses the role of right to information in

empowering citizenry to carry out social audit of the governmental organizations and its instrumentalities by obtaining information on works completed and uncompleted to find out the gaps in provisions of services. Access to information is often and rightly called as the “oxygen for a democratic society”. The absence of adequate and accurate information can collapse economies, cripple governments and paralyse societies. Hence, information is indispensable for the transparent and accountable functioning of a true democratic government. It provides safeguard against abuses, mismanagement and corrupt practices. There are certain restrictions, which are imposed on disclosing information to the public but these restrictions are always in the public interest or national interest of the country. The discretionary power of the public authority with regard to proactive disclosure is subjected to some limitations. The right to information represents an essential ingredient in the proper functioning of substantive as well as procedural democracy, and thus this right is a necessary condition for the exercise of other human and civil rights.

1.8 GLOSSARY

Non-Disclosure Clause: It is a confidentiality clause that prohibits the sharing of confidential information. Section 4(1)(b) of the RTI Act lays down the information, which should be disclosed by Public Authorities on a *suo motu* or proactive basis. Section 4(2) and Section 4(3) prescribe the method of dissemination of such information. The purpose of *suo motu* disclosures under Section 4 is to place large amount of information in public domain on a proactive basis to make the functioning of the Public Authorities more transparent and also to reduce the need for filing individual RTI applications.

Non-Obstante Clause: It is a Latin word, which means “notwithstanding anything contained”. It means this clause empowers the legislation or a provision in which it contains, to override the effects of any other legal provisions contrary to this under the same law or any other laws.

Social Audit: The concept was pioneered by Charles Medawar in 1972. A social audit is a way of measuring, understanding, reporting and ultimately improving an organisation’s social and ethical performance. A social audit helps to narrow gaps between vision/goal and reality, between efficiency and effectiveness.

In the context of government schemes, a social audit is an accountability tool that measures, evaluates, identifies gaps in service delivery and elicits promises to rectify these gaps with the direct participation of intended beneficiaries in this process. Thus, social audits examine and assess the social impact of specific programmes and policies. In April 2017,

Meghalaya became the first State in the country to pass social audit legislation.

Social Transformation: It is a broad concept, which incorporates the meaning of evolution, progress, change, on the one hand, and development, modernisation and revolution on the other. Its literal meaning is “changing form” or “appearance” or “character”. When massive, structural or far reaching social change occurs, it is called social transformation. New social movement facilitates it, and new form of power emanates from it.

CCS (Conduct) Rules: The Central Civil Services (Conduct) Rules, 1964 were notified laying down the Code of Conduct for Central Government employees, with a view to maintain integrity in Public Services. In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the rules. It imposes various restrictions on the Government servants.

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1.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - In 1946, the UN General Assembly adopted a Resolution stating, *Freedom of information is a fundamental human right*. The US Supreme Court interpreted the First Amendment to the Constitution to include a right to access of information. The oldest freedom of information law is called the Swedish Freedom of the Press Act. *For details see Section 1.2 of the Unit*.
- 2) Your answer should include the following points:
 - Right to information is a “facet of speech and expression” as contained in Article 19(1)(a) of the Constitution of India. Right to information is indisputably a fundamental right. Read any book of Constitution for

commentary on Article 19(1)(a). *Read preamble of RTI Act, 2005 and for more details, refer to Section 1.2*

3) Your answer should include the following points:

- Write meaning of the term 'information' and from where it is derived. Freedom of expression means freedom to speak, write, print or publish whereas freedom of information means the ability of the individuals to get access to information. *For details, Refer to Section 1.3 and consult any book on the Constitution.*

Check Your Progress 2

1) Your answer should include the following points:

- Analyse the right to information as a tool to carry out social audit of the governmental organisations by investigating gaps between work executed and promised. It also brings out cases of corruption or abuse of power for bringing structural changes in different institutions of national life. *Refer to Section 1.4.*

2) Your answer should include the following points:

- Many cases of misuse of power and money have been highlighted by the RTI and culprits have been brought to book. *See Section 1.4 of the Unit for referring to success stories.* You may also consult other relevant Unit of Block 4.

Check Your Progress 3

1) Your answer should include the following points:

- *Refer to Section 1.5 (a) of the Unit for non-disclosure clause of right to information and for non obstante clause which gives overriding effect to provisions of RTI Act.*

2) Your answer should include the following points:

- Refer Sections 3, 5 and 14 of the Official Secrets Act, 1923 which impose certain restrictions on disclosure of the information. Besides, for referring to other statutory provisions prohibiting disclosure of information refer *Section 1.5(b)* of the Unit.