

BLOCK 3
IMPLEMENTATION OF THE RIGHT TO
INFORMATION ACT, 2005: ISSUES AND
CHALLENGES

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This Block covers relevant information on the implementation of the Right to Information Act, 2005. It consists of five units, i.e., Unit 6-10. The major focus in sixth Unit will be on issues and challenges in bringing administrative efficiency, more transparency and accountability through the Right to Information Act, 2005. The study explains the concept of administrative efficiency, transparency and accountability; and analysis the role of the Right to Information Act in bringing administrative efficiency, transparency and accountability. In the end, it highlights the major issues and challenges in bringing administrative efficiency, more transparency and accountability.

The next Unit emphasises on expectations of citizens and constraints in effective role and performance of the Central Information Commission, State Information Commissions and Public Authorities. The study highlights citizens' expectations from the Public Authorities in implementation of the RTI Act, describes the major constraints faced by Public Authorities in implementation of the RTI Act, analyses the role of Central and State Information Commissions and examines the challenges faced by the Central and State Information Commissions in implementation of the RTI Act.

The eighth Unit explores constraints in implementation of the RTI Act at district level. This Unit focuses on the structural and functional dimensions of the District Administration in India, describes significance of the RTI regime in participatory governance, highlights the main features and deficiencies of the RTI Act, brings out the constraints in implementation of the RTI Act at the district level, and in the end, suggests necessary measures for removing road blocks and also the way forward for effective implementation of the RTI Act.

The ninth Unit aims to analyse the role and importance of media in governance through the RTI. This Unit also recognises the contribution of media in enacting the Right to Information Act, 2005. It reflects how right to information law helps the media to uncover the “Maladies and Flaws” prevalent in various organs of the Government, and role played by media to bring sensitiveness on various issues among the masses having ramifications on their social life. It deliberates how the RTI Act helps in getting access to court proceedings and parliamentary processes and how different Government institutions can be approached for relevant information. Further, this Unit also analyses the role of media in highlighting the issues of public importance through the RTI. It brings out constraints and challenges in accessing justice for the people. At the end, it suggests that with concrete efforts and restraint attitude media can help in bringing the RTI regime in true sense.

The tenth Unit of this Course emphasises on the role of Civil Society Organisations in achieving the right to information. It explores the genesis of the Right to Information Movement in India, analyses the role of civil society in law-making, illustrates the role of civil society organisations in the evolution and implementation of the right to information; highlights the initiatives of the Government in enactment of the Right to Information Act, 2005 and brings out the value of democratic principles in the governance. It is to be noted that it contemplates on the active role played by the people's groups in getting the RTI formally recognised in India.

The last Unit of this Block explores the role of Civil Society Organisations in developing countries, which paved the way for enactment of the Right to Information Act, 2005. It highlights very remarkable non-political socio-legal movements, which brought new legislative enactments as well as amendments in existing statutes to bring qualitative changes in the life of people of India. It specifically analyses, in detail, historic role of Mazdoor Kisan Shakti Sangathan, National Campaign for People's Right to Information and its Allies along with Anna Hazare's crusade against corruption. This Unit also focuses upon the role played by the functionaries of the Government of India, Commonwealth Human Rights Initiative, Consumers Education and Research Centre and other small groups in bringing the RTI Legislation in India. It also highlights the fact that for law-making concerted and continued efforts made by awakened citizenry involving interests of all affected and prospective stakeholders works as guiding force.

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UNIT 6 ADMINISTRATIVE EFFICIENCY, TRANSPARENCY AND ACCOUNTABILITY THROUGH THE RIGHT TO INFORMATION ACT, 2005: ISSUES AND CHALLENGES*

Structure

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Towards Transparent and Efficient Government: The Right to Information Act, 2005
- 6.3 Administrative Transparency and Accountability: Bottlenecks in the RTI Act
 - 6.3.1 Poor Record Management
 - 6.3.2 Need to Improve Proactive Disclosure of Information
 - 6.3.3 Quality of Public Information Officers
 - 6.3.4 Low Level of Public Awareness
- 6.4 Conclusion
- 6.5 Glossary
- 6.6 References
- 6.7 Answers to Check Your Progress Exercises

6.0 OBJECTIVES

After studying this Unit, you should be able to:

- Explain the concept of administrative efficiency, transparency and accountability;
- Analyse the role of the Right to Information Act in bringing administrative efficiency, transparency and accountability; and
- Examine the issues and challenges in bringing administrative efficiency, transparency and accountability.

*Contributed by Dr. Sapna Chadah, Assistant Professor, Administrative & Constitutional Law, Indian Institute of Public Administration, New Delhi.

6.1 INTRODUCTION

The RTI Act is a path-breaking legislation that signals the march from darkness of secrecy to dawn of transparency. It is a key to strengthening participatory democracy and governance. In this Unit, first of all, we will discuss the key concepts of the study, that is, governance, accountability, transparency and rule of law.

a) *Governance and Good Governance*

It is an action or manner of governing, which promotes fairness, transparency and accountability in the functioning of a government department/organisation. It contributes in a process whereby societies or organisations make their important decisions, determine whom they involve in the process and how they render accountability (Graham, Amos & Plumptre, 2003). The governance is the evolution by which authority is conferred on rulers, by which they make the rules, and by which those rules are enforced and modified. Thus, understanding governance requires an identification of the rulers and the rules, as well as the various processes by which they are selected, defined, and linked together and with the society generally. When the term governance is preceded with the connotation “good”, some value-assumptions and attributes such as efficiency, accountability, transparency, participation, rule of law, justice and control of corruption are added to it. Good governance implies service to the people.

The Government’s task is to govern in a way that optimises the security and welfare of citizens. Majority of the donors’ organisations agree that the term good governance should include increased public accountability and transparency; respect for and strengthening of the rule of law and anti-corruption measures; democratisation, decentralisation and local government reforms; increased civil society participation in development; and respect for human rights and the environment (Drake et.al., 2001).

Good governance comprises the existence of effective mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences. Accountability, transparency, Rule of Law and citizens’ participation in the process of governance are the basic postulates of good governance.

b) *Accountability*

Accountability means holding individuals and organisations responsible for performance measured as objectively as possible (Paul, 1995). It is an obligation of the persons in power to explain publically, how they are

fulfilling the responsibilities vested in them, which affect the public in their day-to-day life. The actions of these wielders of power are required to be citizen friendly, just, fair, responsive, effective, ethical, reasonable and for progress of the society. The concept of public accountability applies equally to all levels of government, its systems and sub-systems. Accountability requires the authority to explain intention, performance standards and results of action taken i.e. the output and the outcome. The need of accountability stems from the ideal that the institutions of public governance are the repositories of public power and public power in turn is the trust or faith of the people. Therefore, public purpose requires public interest needs and public good demands that exercise of public power must be subjected to the benefit of the society as a whole. There is yet another dominant reason for enhancing accountability in public domain that power without liability of accountability is tyranny. It may also be added that public power is always linked with responsibility. Power without responsibility is against the norms of democracy and the rule of law ideals.

c) ***Transparency***

Transparency in governance basically means people should be able to access public information when they want it. They should be able to know what public officials are doing and how the policies are being implemented. Citizens demand greater transparency from governments and require information on who, why and how of decision making. Other aspects of transparency in the public service require clarity. That means there is integration with other decisions, it is logical and rational, accountable, truthful and accurate, and open. If citizens have a problem in getting information and grievance redressal, then they may expect there should be an effective and efficient complaint redressal channel. Greater transparency also helps in upholding integrity in the public sector by reducing the risk of fraud, corruption and mismanagement of public funds. All the departments and public bodies should have computerised information counters so that information and assistance is available to the public on various essential services.

d) ***Rule of Law***

The rule of law primarily means that everything must be done according to law. Applied to the powers of government, this requires that every government authority that does some act, which would otherwise be a wrong or which infringes a man's liberty, must be able to justify its action as authorised by law and in nearly every case this will mean authorised directly or indirectly by legal provisions. However, the rule of law demands something more, since otherwise it would be satisfied by giving the government unrestricted discretionary powers, so that

everything that they did was within the law. The secondary meaning of the rule of law, therefore, is that government should be conducted within a framework of recognised rules and principles, which restrict discretionary powers. An essential part of the rule of law, accordingly, is a system of rules for preventing the abuse of discretionary powers. A third requirement of the rule of law is that disputes as to the legality of acts of government are to be decided by Judges who are independent of the executive. The rule of law remains none the less a vital necessity to fair and proper government. The enormous growth in the powers of the state makes it all the more necessary to preserve it (Wade & Forsyth, 2009).

The governance and administration of any social enterprise must be realised within the framework provided by the rule of law. This precept establishes the obligation of individual and collective obedience to the system of public rules that define the legal limits of what can and cannot be done. Disobedience to the law leads to corrupt and criminal behaviour (Aneelo, 2006).

Check Your Progress 1

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

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

1) Discuss the concept of accountability.

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2) Explain the meaning and concept of transparency and rule of law.

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6.2 TOWARDS TRANSPARENT AND EFFICIENT GOVERNMENT: THE RIGHT TO INFORMATION ACT, 2005

Citizen's participation in governance is fundamental to democracy as ultimate power vests with the people. It is an essential way in which citizens contribute to the governance system, directly and indirectly through their collective participation in civil, public and corporate institutions (Taori, 2003). Greater participation is crucial for good governance as greater participation by citizens in decision-making process allows greater transparency. Further, it also helps to ensure that political decisions are adapted to the needs of the people affected by them.

Citizens' participation in governance also depends on the quality and quantity of information shared with them. Thus, information and knowledge are the basis of democracy and instruments of transformation. Peoples' acquaintance with the information and basis for decisions-making is *sine qua non* for transparency and accountability. The government, which operates in secrecy loses the faith of the people and thereby its legitimacy and credibility. Importance of the right to information has been recognised as one of the essential requirements of good governance. Access to information besides promoting efficiency, transparency and accountability in administration, also facilitates active participation of people in the governance process. World over, the RTI laws have gained prominence as critical tools to combat corruption and inefficiency.

In India, the Right to Information Act came into being in 2005; a landmark event that made the governance processes of the country accessible to its citizens. Till the enactment of the RTI Act, the Official Secret Act, 1923 generally debarred disclosure of any official information to the public. The RTI Act is based on the principle that all government information is the property of the people. It takes democracy to the grassroots level and is also a step towards ensuring participatory governance in the country (Misra & Chadah, 2015).

Indian transparency law established a practical regime of the right to information for citizens to secure access to information under the control of public authorities. It mandates timely response to the requests made by the citizens for government information. The RTI Act has empowered people to meaningfully participate in democracy and hold the government accountable. Now the citizens can raise questions, examine and review government decisions, making ordinary citizen important stakeholders in the governance process. Now the decisions taken by the government are more open to public scrutiny. The citizens can seek definite and direct response from the officials of their work. This way the RTI Act has become the most effective

instrument to check corruption and promote openness, transparency and accountability. The Act also directs public authorities to periodically publish un-exempted category of information of general interest proactively through various means including internet. Any public authority, which delays or withholds information required by an individual, has been made answerable, accountable and punishable where necessary. The emphasis has now shifted from secrecy to openness and turning government to be a government of the people in the real sense.

According to a study, the general perception of people is that access to information has actually helped as much as 77 percent of the individuals think that the ability to access government information could be helpful in one way or another, while 58 per cent felt that access to information held by the government was helpful as it could help in solving individual problems, and also find out about their rights vis-à-vis government, to get official documents/ certificates and solving grievances. It could help in prevention of corruption, minimise bad governance and improve government efficiency (24%). Further, 26 per cent thought that it would contribute to solving community and national problems. In fact, the RTI Act has promoted transparency at all levels (Bhardwaj et al., 2014).

6.3 ADMINISTRATIVE TRANSPARENCY AND ACCOUNTABILITY: BOTTLENECKS IN THE RTI ACT

6.3.1 Poor Record Management

Records are vital to virtually every aspect of the governance process. The effectiveness and efficiency in public services and government functions rests on availability and access to information held in records. To ensure rule of law and accountability in government functioning, proper record keeping is must. Thus, records are at the core of the right to information. For proper implementation of the RTI laws an effective system for creating, managing, storing and archiving records is needed. In absence of proper record management, it will be difficult to reply to applications within the time limits set by the law, which will undermine the law.

Therefore, good record keeping is a pre-requisite to public access to information. Enactment of the Right to Information Act, 2005 has thrown up new challenges before the civil services in regard to the strengthening of the practices and procedures for record management in government for effective implementation of the Act. The Act enjoins upon the public authorities to strengthen their records management systems and use of the latest technology for this purpose in a cost effective manner.

According to the RTI Act, Section 4(1) (a), a Public Authority needs to “maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that are appropriate to be computerised are within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated”. Thus, the Act requires that records should be managed in a way that facilitates access. This requires regular review of current records management processes. The management of records should not only be in terms of collation and storage, but classification and archiving as well. Further, the Act also requires that as many records as possible are computerised and connected through a network all over the country (subject to financial resources). Public Authorities need to meet the requirements of the RTI Act to review their current record keeping procedures and other constraints and plan out the resources.

Record Keeping – Current Reality

The Second Administrative Reforms Commission (SARC) in its First report entitled “Right to Information: Master Key to Good Governance” has stated that perhaps the weakest link in our information system is the total neglect of record keeping. The Commission has noted that even in the Union Ministries and Departments, the status of record keeping is a problematic area. In many of the subordinate offices/agencies of the Government, the record keeping procedures are totally missing. Where they exist, they are rarely followed. The record keeping procedures have not been revised for decades and the practice of cataloguing, indexing and orderly storage is especially absent. As a result, even when records are stored, retrieval of intelligible information becomes difficult and virtually impossible. This leads to the practice of giving bulk unprocessed information rather than a relevant and intelligible summarisation. Earlier the Tenth Finance Commission had also taken cognisance of it and recommended special grants to the states for improving record keeping. The ARC further mentioned that few public authorities have made creditable efforts to digitise their records and store them in an easily retrievable manner. However, these have largely remained pilot projects limited to a few islands of excellence. To ensure that the information is available in easily retrievable and intelligible form, a combination of measures is required. For this, the record keeping procedures need to be developed, reviewed and revised. The cataloguing, indexing and orderly storage of records should be mandatory. All documents need to be converted into rational, intelligible, retrievable information modules. A road map for digitising of records needs to be developed. A permanent mechanism with sufficient authority, expertise and responsibility needs to be created in each government department to coordinate and supervise proper record keeping.

A study conducted by RAAG & SAMYA in 2014 (Bhardwaj et al., 2014) also highlighted that one major constraint faced by the Public Information Officers (PIOs) in providing information in timely manner is a poor state of record management in most public authorities. In the case of *Paramveer Singh vs. Panjab University* (PRIA, 2006), the Commission held that every public authority, particularly after the implementation of the Right to Information Act, must take all measures in pursuance of the Section 4(1)(a), to implement efficient record management system in their offices so that the requests for information can be dealt with promptly and accurately. In the above case, the applicant had applied for information regarding the merit list for selection of candidates to a particular post in the university. However, no proper information was supplied to him due to the negligence of the University's PIO in identifying and collecting the proper information. As a result, the applicant was given misleading information. The Commission held that the University should streamline its records management system in such a manner that information can be provided to the citizens without any delay.

Thus, for proper implementation of the RTI law, it is essential to review and modify the record management system in place. It should be ensured that the record management system functions properly to meet the RTI needs. The records should be created and managed in accordance with clear, well-understood filing, classification and retrieval methods. With rapid developments in information and communication technology, it is important that record management guidelines deal with management of electronic records as well. In this regard, guidelines should be developed for all four stages in the life of a record:

- Creation or acquisition of the record;
- Its placement within a logical, documented system that governs its arrangement and facilitates its retrieval throughout its life;
- Its appraisal for continuing value, recorded in a disposal schedule and given effect at the due time by appropriate disposal action;
- Its maintenance and use, that is, whether it is maintained in creating office, a records office, a records centre or an archival repository, and whether the use is by its creator or a successor in function or by a third party, such as a researcher or other member/public.

6.3.2 Need to Improve Proactive Disclosure of Information

Suo motu disclosure of Information by the public authorities was supposed to be strongest pillar of the historic law that came into effect in 2005. Section 4(1)(b) of the Act laid down the information, which shall be disclosed by the Public Authorities proactively. It listed 17 categories of information to be disclosed proactively, which include information pertaining to its

organisation, functions, and duties; the procedure followed in its decision-making process, and the norms and rules followed by it in discharging its functions; statement of the categories of documents that are held by it or are under its control; directory of its officers and the system of remuneration for their services; details of its Public Information Officer such as name, designation and contact details, etc. The purpose of *suo-motu* disclosure is to place maximum information in the public domain on proactive basis. This will enable the citizen to access the information held by Public Authorities without resorting to the provisions of the RTI Act. Further disclosure of information will promote transparency and accountability in the functioning of the government.

The RTI Act, Section 4(2) and 4(3) also mandates that public authority shall constantly endeavour to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information. All information must be disseminated widely and in a manner, that is, easily accessible to the public. The authority must also on its own volition make all such information public instead of waiting for citizens to file the RTIs seeking such information. The dissemination must be conducted in a cost-effective manner.

Since operationalisation of the RTI Act, large amount of information relating to the working of the public authorities has been put in public domain. But the quality and quantity of proactive disclosure still remains a major issue of concern. Even after 15 years of the RTI Act, every Ministry and Department is paying only lip service to Section 4 and dishing out-dated information. To further strengthen the proactive disclosure, the Government issued guidelines for *suo motu* disclosure under Section 4 of the RTI Act, which provided for the following:

- *Suo motu* disclosure of more items under Section 4.
- Guidelines for digital Publication of proactive disclosure under Section 4.
- Detailing of Section 4(1)(b)(iii), 4(1)(b)(iv), 4(1)(b)(xi), 4(1)(b)(xiv).
- Compliance mechanism for *suo motu* disclosure (proactive disclosure) under the RTI Act, 2005.

Further, Operationalising RTI Act in letter and spirit would require government's initiative, that's why the Department of Personnel and Training (DoPT) has directed all the Public Authorities (PAs) under these guidelines to get the proactive disclosure of information regularly audited by a third party.

An assessment of disclosure by the Public Authorities (PAs) conducted by the CIC through Transparency Audit of Disclosures (Tiwari & Ansari) conducted in 2018 reveals that certain vital information is not fully displayed on the websites of the different government departments. This information relates to: Decision-making process, the delegation of powers, duties, and responsibilities of officials and the system of compensation paid to them; information relating to consultation with public on the proposed major policy decisions; minutes of the meetings of various committees and boards; details of norms applicable in the functioning of the authority; various categories of documents held by the organisations and custodians thereof; policy on transfer and posting of senior officers deployed at important and sensitive places; the RTI applications and appeals received and their responses; details of domestic and foreign visits undertaken by the senior officials; details of grievances redressal mechanism of affected persons; discretionary and non-discretionary Grants and details of the beneficiaries of subsidy; details about Public-Private Partnerships and outcome of such ventures.

The committee in the above report has recommended that a full-fledged transparency audit of the public authorities is the only way to determine the transparency preparedness of these instrumentalities. To conduct such audit exercise of that scale huge preparation, trained auditors, an institution for audit oversight and definitive arrangements for implementation of the audit recommendations are required. To begin with evaluation of the websites of the public authorities to determine their compliance with the mandated provisions of Section 4 of the Act be undertaken, which can be extremely useful. This will ensure that comprehensive information disclosures are done on websites by the Public Authorities, and the websites are carefully designed and regularly updated.

To further strengthen the proactive disclosure regime, it is also required that the DoPT and the state nodal agencies should direct all PAs to designate one or more PIOs as responsible for ensuring compliance with all the provisions of Section 4. Where these directions are not complied with by the PAs within a reasonable period, action should be initiated against them.

6.3.3 Quality of Public Information Officers

Public Information Officers (PIOs) are the backbone of the RTI system and act as interface between information seekers and the government. One of the pre-requisites for effective implementation of the RTI Act is efficiency in the functioning of Public Information Officers. The PIOs are the repository of information and assigned with the responsibility to supply the information to the applicant in the time bound manner and also give required assistance to the citizen wherever necessary in seeking information. However, studies indicate that the PIOs are challenged to provide the information within the

stipulated time. Further, under Section 5(3) of the RTI Act, it is expected of the PIOs to assist citizens in drafting the RTI applications. To ensure compliance under the RTI Act, the CPIO also needs assistance from other officers for proper discharge of duties or appoint any person as deemed CPIO under Section 6(3) of the Act. Most importantly, in case of denial of request, the onus lies on PIO to prove that denial was justified. This mandates that PIO has to discharge duty with sufficient and reasonable cause in order to evade liability. All these make it desirable that CPIO should have required knowledge of the RTI Act as well as right outlook towards information disclosure. There is need to change the perception of the government employees towards the RTI law so that they don't consider it as burden.

However, current scenario is completely contradictory of the prescribed guidelines as the person appointed to the post of CPIO often lacks the required knowledge to deal with the RTI applications. The PIOs do not have any training to deal with RTI applications. This creates delay in the process of the delivery of the answer of the application as well as quality of information provided is poor. This becomes the major reason for the dissatisfaction among information seekers.

The CPIO is not a statutory position; an officer in the department is assigned additional duties of PIO, which involves serious obligations without any incentives. Besides this, delaying, non-supply of information can have penal consequences. Often it is observed that unsuitable person is appointed as CPIO, who does not have knowledge of the RTI Act. Non-friendly attitude of the PIOs and poor quality of information being provided are the major concerns regarding the CPIOs. This situation is further aggravated due to lack of training of PIOs and lack of enabling infrastructure (computers, scanners, internet connectivity, photocopiers etc.). An in-depth understanding of the RTI Act is a basic requirement for both PIOs and First Appellate Authorities to discharge their duties effectively. A module on RTI should be incorporated in all training programmes for government servants as most of them are potential PIOs or first appellate authorities. Besides training in the RTI Act, appropriate training in behavioural skills is also required as this will enable them to treat properly the information seekers and provide assistance to the applicants.

6.3.4 Low Level of Public Awareness

RTI is a tool meant to be used by the public to hold government responsible for their actions and inactions. Low level of awareness among citizens acts as major hindrance in using this powerful weapon, especially by disadvantaged communities. Section 26 of the Act provides that the appropriate Government may develop and organise educational programmes to advance the understanding of the public, especially disadvantaged communities,

regarding how to exercise the rights contemplated under the Act. After 15 years of the implementation of the Act, there still remains an urgent need for a concerted approach to increase awareness among the public. For generating awareness, the Mass media channels like television, radio broadcast, newspapers, etc. need to be more rigorously used as these have maximum reach among the rural and backward areas. Besides this, internet and social media should also be used as these have wider reach among the youngsters and urbanites. The RTI stories, pamphlets, advertisements, television serials and dedicated programming on the RTI awareness need to be developed to popularise the concept. The publicity materials must be developed in Hindi, English and various regional languages to have better outreach.

Check Your Progress 2

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

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

- 1) Write a note on role of the RTI Act in providing transparent and efficient government.

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- 2) What are the bottlenecks in the RTI Act in bringing administrative transparency and accountability?

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- 3) Describe the need to improve proactive disclosure of information.

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6.4 CONCLUSION

Transparency, accountability and participation form the basic mandate of the RTI Act. There is a necessity to undertake the measures to strengthen this powerful tool that can deliver significant social benefits. There is also the need to undertake the measures to strengthen this powerful tool that can deliver significant social benefits.

6.5 GLOSSARY

Record Keeping: It refers to the activity of organising and storing all the documents, that is, files, invoices, etc., which are related to a particular government department or organisation's activities.

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6.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Refer Section 6.1(b).
- 2) Your answer should include the following points:
 - Refer Section 6.1(c and d).

Check Your Progress 2

- 1) Your answer should include the following points:
 - Refer Section 6.2
- 2) Your answer should include the following points:
 - Refer Section 6.3
- 3) Your answer should include the following points:
 - Refer Section 6.3 (6.3.2).

UNIT 7 ROLE OF THE CENTRAL INFORMATION COMMISSION, STATE INFORMATION COMMISSIONS AND PUBLIC AUTHORITIES: EXPECTATIONS AND CONSTRAINTS*

Structure

- 7.0 Objectives
- 7.1 Introduction
- 7.2 Expectations from the Public Authorities
- 7.3 Challenges before the Public Authorities
- 7.4 Working of the Information Commissions
- 7.5 Constraints in Working of the Information Commissions
- 7.6 Conclusion
- 7.7 Glossary
- 7.8 References
- 7.9 Answers to Check Your Progress Exercises

7.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the expectations from Public Authorities in implementation of the RTI Act;
- Describe the major constraints faced by Public Authorities in implementation of the RTI Act;
- Analyse the role of Central and State Information Commissions; and
- Examine the challenges that the Central and State Information Commissions are facing in implementation of the RTI Act.

7.1 INTRODUCTION

The Right to Information Act, 2005 has completed 15 years of existence. The legislation confers on all citizens a right to seek information and

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correspondingly makes it the duty of the Public Authorities to disseminate information for better governance and accountability. The Act has ushered in a new era of performance and transparency to benefit the common man in the complex modern world; and empower the people to judge, if the government is functioning in public interest. The RTI Act has contributed to enhance the ability of citizens to become aware and remain involved in activities of the government. Keeping in view, the nature of economic inequality and social deprivation prevailing in Indian society, it is a significant gain for the low-middle class and marginalised people. It has empowered the Individuals to fight with the corrupt politicians and administrators by resorting to the RTI. The transparency has contributed in improving the decision-making attitude of public servants by making them more responsive and accountable to the public; and controlling corrupt practices by making it more difficult to hide illegal agreements and action.

In a country as big and diverse as India with a population of 1.40 billion, to assess the impact of RTI is not an easy task. But there is no doubt that no other reformative legislation has been able to touch the lives of the people as the RTI has done. According to a study report by Transparency International, around 2.44 crore applications under the Right to Information (RTI) Act (Section 2(f)) have been filed with various central and state government departments by the citizens (Firstpost, 2017). The role played by Central Information Commission (CIC) and State Information Commissions (SICs) and civil society cannot be denied. They have ensured that the Act surmises and also helps in better governance. According to a report by Transparency International during 2005-06 to 2015-16, a total of 13,48,457 second appeals and complaints were received by all Information Commissioners – in the Central and State Information Commissions. The Act, which was primarily meant to facilitate the disclosure of records and documents, has been far-reaching benefits. People in India, have well recognised and imbibed that “information is power”.

The passing of a law, no doubt, is one of the extremely important parts of securing the right to information. However, it needs to be supplemented by effective implementation of the law, to make it effective and meaningful. A number of aspects are required to be taken into consideration for effective implementation and operationalisation of the RTI legislation. Some of these facets, which require immediate attention are: generating public awareness, promoting an informed civil service, encouraging cultural change within the civil service, and developing an efficient and well-organised information management system. Some of the areas, which still remain matter of concern regarding Public Authorities and Information Commissions will be discussed in this Unit.

7.2 EXPECTATIONS FROM THE PUBLIC AUTHORITIES

The RTI Act defines a “Public Authority” as any authority or body or institution of self-government established or constituted by or under the Constitution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government. Bodies owned, controlled or substantially financed by the Central Government or a State Government and Non-Governmental Organisations substantially financed by the Central Government or a State Government also fall within the definition of the Public Authority.

i) Duty to Maintain and Supply Information

Public Authorities are the repository of information and have a duty to supply the same when requested by the citizens. The RTI Act gives citizens the right to access information held by Public Authorities. For that the Act imposes a duty on the Public Authorities to set up a practical regime to provide information to the public. They are required to proactively disclose specified types of information and are duty bound to supply other non-exemption categories of information in response to the RTI application. Under the RTI Act (Section 2(f)), the citizen can also seek “*information relating to any private body which can be accessed by a public authority under any other law for the time being in force*”. Public Authorities, therefore, not only have to provide information held by them but also become gateways for citizens to access information from private bodies (RTI Assessment and Advocacy Group & Samya – Centre for Equity Studies, 2014).

ii) Record Management

A citizen has a right to seek such information from a Public Authority, which is held by the Public Authority or which is held under its control. To ensure that the citizen receives correct information within the time limit specified, the Public Authority is expected to maintain all its records duly catalogued and indexed in a manner and the form, which facilitates the right to information under the Act [Section 4(1) (a)]. The Authorities are also required to ensure that all records are appropriately computerised and connected through a network all over the country on different systems so that access to such records is facilitated. The Act [Section 8 (3)], however, does not require the Public Authorities to retain records for indefinite period. The records should be retained as per the record retention schedule applicable to the concerned Public Authority.

iii) **Proactive Disclosure of Information**

The Act makes it obligatory for every Public Authority to make suo-motu disclosure of Information. The RTI Act (Section 4) lists various categories of information, which should be proactively or suo-motu disclosed to the public. The purpose of suo-motu disclosure is to place maximum information in the public domain on proactive basis, which can easily be accessed by the people without asking for the same. The Public Authorities have to constantly endeavour to take steps to provide as much information as possible suo motu to the public at regular intervals through various means of communication, including internet. The idea was to cut number of RTI applications and lessen the burden on Public Authorities. Further, this would ensure transparency and openness in the functioning of Public Authorities.

iv) **Dissemination of Information**

The Public Authority should widely disseminate the information through various means — notice boards, newspapers, public announcements, media broadcast, the Internet or any other means. Dissemination should be done in such form and manner, which is easily accessible to the public. The factors like cost effectiveness, local language and most effective method of communication in the local area should be taken into consideration while disseminating the information.

v) **Publication of Facts about Policies and Decisions**

Public Authorities formulate policies and take various decisions from time to time. The Act mandates that while formulating important policies or announcing the decisions affecting the public, the Public Authority should publish all relevant facts about such policies and decisions for the information of public at large.

vi) **Providing Reasons for Decisions**

The Public Authorities take various administrative and quasi-judicial decisions, which affect the interests of certain persons. It is mandatory for the concerned Public Authority to provide reasons for such decisions to the affected persons. It may be done by using appropriate mode of communication.

vii) **Designation of Information Officers**

Public Authority is mandated under the RTI Act (Section 5) to designate as many officers as the Central Public Information Officers or State Public Information Officers (PIOs) in all administrative units or offices under it to provide information to persons requesting for information under the Act. Besides this, at each sub-divisional/sub-district level the Central Assistant Public Information Officer (APIO) or a State Assistant

Public Information Officer should be designated. To meet the expectations of information seekers, the number of PIOs designated by a Public Authority should be reasonably large in keeping with the size and functions of the authority; and efficient officers with ability to take quick decisions must be designated as the PIOs.

viii) Implementation of Decisions of Information Commissions

The Act (Section 19(7)) stipulates that the decisions of the Information Commission on appeals “shall be binding”. Therefore, every Public Authority is required to implement the decisions of the Information Commission regarding compliance with the provisions of the Act (Section 19 & 20), compensating the complainant for loss or other detriment suffered, imposing penalties on erring Public Information Officers etc. The decisions of the Commission are binding and the Public Authority should ensure that the orders passed by the Commission are implemented. If any Public Authority is of the view that an order of the Commission is not in consonance with the provisions of the Act, it may approach the High Court by way of a Writ Petition.

All the Public Authorities are required to keep records and provide information required by the concerned Ministry or Department every year in connection with furnishing of consolidated information needed by the Information Commission for its Annual Report (Section 25(2)). To achieve this, the Public Authorities are expected to adopt and maintain appropriate Management Information System.

7.3 CHALLENGES BEFORE THE PUBLIC AUTHORITIES

The major challenges before the Public Authorities are as follows:

i) Public Authorities refusing to be “Public”

The RTI regime is facing a peculiar problem as many Public Authorities are refusing to be “public” and thereby refuse to supply information. These bodies include political parties, utility services, educational institutions. Besides, private Universities, schools calling themselves Public schools, Trusts, Cooperative Societies, sports bodies that have monopoly over the game, institutions and authorities, which were in fact Public Authorities and office established by the Constitution also have refused to disclose information about their authority. They are refusing to respect the people’s right to information. On the other hand, interpreters of law are taking years to conclude whether they are Public Authorities or not. Finally, some of the Public Authorities are interpreted to be private bodies by reading the definitions out of context. Unfortunately,

the spirit of access law is ignored many a time, leading to total denial of legal right guaranteed by the Parliament (Sridhar, 2014).

In this regard, the Second Administrative Reforms Commission in its report has suggested that:

- a) Each Union Ministry/ Department should also have an exhaustive list of all Public Authorities, which come within its purview. The Public Authorities coming under each Ministry/ Department should be classified into (i) constitutional bodies, (ii) line agencies, (iii) statutory bodies, (iv) public sector undertakings, (v) bodies created under executive orders, (vi) bodies owned, controlled or substantially financed by the government, and (vii) NGOs substantially financed by the government. Within each category, an up-to-date list of all Public Authorities has to be maintained.
- b) Each Public Authority should have the details of all Public Authorities subordinate to it. This should be provided till the last level. These details should also be made available on the websites of the respective Public Authorities, in a hierarchical form.
- c) A similar system should also be adopted by the States.

ii) **Proactive Disclosure of Information**

One of the important features of the RTI Act is that it mandates proactive disclosure of information. Since the promulgation of the RTI Act, large amount of information relating to the functioning of the government is being put in public domain. However, the quality and quantity of proactive disclosure is not up to the desired level. A study on RTI Assessment and Advocacy Group (RAAG) & Samya-Centre for Equity Studies (CES) (2014) states that despite a very strong provision for proactive (suo motu) disclosure under Section 4 of the RTI Act, there is poor compliance by the Public Authorities. This forces applicants to file applications for information that should be available to them proactively. Nearly 70 percent of the RTI applications seek information that should have been proactively made public without citizens having to file an RTI application. The major criticism against proactive disclosure is that every Ministry and Department is paying only lip service to Section 4 and dishing out outdated information. This has given rise to a growing suspicion among the civil society groups and the citizens that the government, let alone implementing Section 4 of the Act, was trying to further restrict the Act.

Thus, the need for laying the detail guidelines and compliance mechanism to ensure that requirements under Section 4 of the RTI Act are met. In order to address the above, the Government of India constituted a Task Force on suo motu disclosure under the RTI Act, 2005

in May 2011. Based on the report of the Task Force, the Guidelines for Implementation of suo-motu disclosure under Section 4 of the RTI Act, 2005 for Central Ministries / Departments were issued on April 15, 2013 prescribing: additional information for proactive disclosures, guidelines for digital publication, guidelines for several Sub-sections of Section 4 to make them more effective and also a framework for monitoring compliance with Section 4.

iii) Poor Record Management

One major constraint faced by PIOs in providing information in a timely manner is the poor state of record management in most Public Authorities. The chaotic nature of the information and public records system, the lack of proper archives and the lack of any consistent system for managing information across the government are major institutional problems. Strengthening information and record management system is, thus, the need of the hour to make the right to information more meaningful. Every Public Authority needs to properly manage, speedily computerise its records and organise them in a searchable database retrievable by key words.

iv) Lack of Training

Public officials weaned on secrecy tend to regard information as power and are reluctant to give it up. They, therefore, delay the processing of information. In the administrative set up public officials tend to regard the files they hold as their own personal property. Within traditionally secretive bureaucracies, information itself is a form of power and officials are reluctant to share it with other officials and most rarely with the public. They lack transparency with regard to the information they hold. To change the mindset of the bureaucracy is a difficult challenge. The training programmes to change the orientation and tackling the ingrained mindset can be important to certain extent.

To have an informed civil service, provision of training on right to information for employees is an important requirement. Besides conducting separate training courses for Public Information Officers and First Appellate Authorities, a module on the RTI should be incorporated into all training programmes, considering all government employees are subject to the RTI Act. Such training should deal with why access to information is important, the scope of any law, procedures by which people request information and how requests should be responded to, how to maintain and access records. Such training programmes will develop a positive mindset among the officials and the law will be seen as a positive benefit to officials, rather than burden. There is need to develop cultural change among the civil servants and public officials as the government with a long history of secrecy will tend to resist releasing

information. Thus, there is need to develop a training plan and training modules for different levels of functioning of the government.

v) **Lack of Awareness among Citizens**

The greatest challenge for RTI regime in India is lack of understanding and awareness of the RTI Act, especially among the weaker segments and the rural population, illiteracy, poverty, division on caste lines are major impediments. Recognising the critical need to disseminate awareness, the RTI Act (Section 26(1)) itself stresses on the government's obligation to "*...advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act*".

The RAAG has conducted a study during the period 2011-13, which indicated that even after 8 years of the enactment of the Act the awareness about the Act was low; as much as 64 percent of the rural respondents and 62 percent of the urban respondents have not heard of the RTI Act. Encouraging trend is that young people seemed to be the most aware of the RTI Act. Newspaper and television are the major sources of information for the public. The government has taken initiative of starting dedicated weekly show titled "*Janane ka Haq*" (Right to Know) on the RTI Act. The programme has vast footprints, reaching about 50 percent of the country's population. However, findings indicated that the government was not a major force in raising public awareness about the RTI Act. The study highlights the need for intensive and sustained measures on the part of the government to raise awareness among people especially the poor and disempowered (RTI Assessment and Advocacy Group & Samya-Centre for Equity Studies, 2014).

It is incumbent on the government to educate and make people aware of their right of access to information as part of promoting a culture of openness and responsiveness within the government. The government — supported public information campaigns are extremely important tools to achieve the goals of right to information. Public Awareness Campaigns need to employ a variety of communication mechanisms including print and electronic media and other available modes of communication.

Check Your Progress 1

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

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

1) What are the major expectations from Public Authorities?

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- 2) Discuss the major challenges before Public Authorities.

- 3) Write a note on Proactive Disclosure of Information as a challenge before Public Authorities.

7.4 WORKING OF THE INFORMATION COMMISSIONS

Under the RTI Act, the Information Commissions (ICs) at the Centre and States have unique position and responsibility. These are quasi-judicial bodies created under the law to adjudicate appeals and complaints of citizens who have been denied access to information. They have extensive powers including the power to impose penalties on officials, and their decisions are final and binding. The effective and efficient functioning of the ICs is widely seen as being critical to the RTI regime. In effective implementation of the RTI Act, the role of CIC is laudable. In spite of various restraints the CIC has been able to ensure that a large number of agencies resisting the RTI have been opened up. Over the years, the decisions of the CIC have brought interesting and new dimensions in the implementation of the RTI Act and made the right a reality.

The function of the commissions is to adjudicate appeals and complaints of citizens denied access to information. Unfortunately, the RTI Act does not specify any time limit within which the Information Commissions must dispose of an appeal or complaint. The commissions have wide powers under the Act, which include: power to require the Public Authority to provide access to information, appoint the PIOs, publish certain categories of

information and make changes to practices of information maintenance. The commissions have the power to order an inquiry if there are reasonable grounds for one, and also have the powers of a civil court for enforcing attendance of persons, discovery of documents, receiving evidence or affidavits, issuing summons for examination of witnesses or documents. Sections 19 and 20 of the RTI Act empowers the Information Commissions to require the Public Authority to compensate the complainant for any loss or other detriment suffered; and impose penalties on erring officials.

7.5 CONSTRAINTS IN WORKING OF THE INFORMATION COMMISSIONS

Effective and efficient functioning of the Information Commissions is crucial for proper implementation of the RTI Act. The quasi-judicial machinery under the RTI Act is riddled with many operational issues. The main issues concerning public are as follows:

- Appointment of the Information Commissioners and composition of Information Commissions.
- The state of record maintenance by the ICs and transparency in the functioning of the commissions.
- Disposal of appeals and complaints by the ICs – pendency and delays in the commissions and the consequent backlog.
- Willingness of the commissions to levy penalties on erring officials and award compensation to applicants, where required.
- Ability of the commissions to ensure recovery of penalties and ensure payment of compensation.
- Accountability of the commissions (RTI Assessment and Advocacy Group & Samya – Centre for Equity Studies, 2014).

The following constraints have been observed in the working of Information Commissions:

i) **Dependence on the Government for financial and infrastructural support**

The Act creates the Information Commissions as independent authorities under the Act and clearly defines their responsibilities. However, on the ground level Information Commissions are dependent on the Government for funds, infrastructure and functionaries. As a consequence, currently the Information Commission is as effective as the support provided by the appropriate Government.

ii) Vacancies in the Information Commissions

There is large pendency of appeals and complaints in many commissions across the country resulting in inordinate delay in disposal of cases. The main cause of such pendency is the failure of the Central and State governments to take timely action to appoint the Information Commissioners. According to a latest study by Transparency International in 2020, “State Transparency Report 2020”, as on October 2020, 38 out of 160 posts of the Chief Information Commissioner and Information Commissioners are vacant. As per the State Transparency Report 2019, published on Oct, 2019, 24 out 155 (excluding J&K) posts were vacant. It is to be noted that the Meghalaya Information Commission is the only single member Commission. In five states, the State Information Commissions are 2 member Commissions, and in six States Information Commissions are 3 member Commissions. Four Information Commissions were headless including the CIC. Only Eight Commissions including the CIC have Women Information Commissioners.

iii) Background of the Information Commissioners

Since the RTI Law came into effect, the Information Commissions across the country have been headed overwhelmingly by the retired civil servants, most of whom were former members of the Indian Administrative Service (RTI Assessment and Advocacy Group & Samya – Centre for Equity Studies, 2014). It appears that the governments increasingly prefer the retired civil servants over candidates with other specialisations. A study on the functioning of Information Commission (Satark Nagrik Sangathan (SNS) and Centre for Equity Studies (CES), 2019) has found that 58 percent of the Commissioners for whom background information was available, were retired government officials. Similarly, the Chief Information Commissioners for whom data was obtained, it has been observed that 83 percent were the retired government servants, which includes 64 percent retired Indian Administrative Service (IAS) officers. The gender composition of the commissions has also been found to be extremely lop-sided. Since the passage of the RTI Act in 2005, merely 10 percent of all Information Commissioners and less than 7 percent of Chief Information Commissioners, across the country have been women. This still remains the condition in spite of the Supreme Court giving directions from time to time to rectify this situation. In *Namit Sharma vs Union of India* (AIR 214 SC 122) the Supreme Court issued directions requiring the Governments to make the effort to identify candidates other than retired civil servants for appointment to the Information Commissions.

For effective implementation of the RTI Act, the Information Commissions are required to be better balanced bodies having greater gender parity and a mix of experts and professionals from various fields including former civil servants, legal professionals, social activists, academics, journalists and other professionals.

iv) **High Pendency of Cases and Delay**

There are huge and growing delays in the disposal of cases in many of the Information Commissions, with pendency of cases growing every month. The massive backlog in disposal of appeals and complaints in the Information Commissions is effectively denying people their fundamental right to information – it is resulting in citizens having to wait for excessively long periods of time to have their appeals and complaints heard. The study indicates that at the state level, it often takes them over one year to get a hearing at the ICs (RTI Assessment and Advocacy Group & Samya – Centre for Equity Studies, 2014). A study conducted by Satark Nagrik Sangathan and Centre for Equity Studies (2019) indicates that as on March 31, 2019, as much as 2,18,347 appeals and complaints were pending in the 26 Information Commissions. Of these, the maximum number of appeals/complaints were pending in Uttar Pradesh (52,326) followed by Maharashtra (45,796). The comparative data for these two Commissions shows that the number of cases pending had increased 20 percent between March 31, 2018 and March 31, 2019. The estimate showed that eleven ICs studied would take more than one year to dispose an appeal/complaint. The paucity of Commissioners, low productivity to inadequate support and no legally prescribed time limit for disposing second appeals were recognised as the main reasons for delay and pendency.

v) **Non-compliance and Enforcing Orders of the ICs**

Often, orders of Information Commissions are not heeded to by the concerned Public Authority and even penalties that are imposed are not recovered. Many Commissions do not have effective methods of monitoring or enforcing compliance. This non-compliance of the order would be an obstruction in the delivery of information. In view of the interpretation given by the High Courts relating to Section 20 of the Act, it can be inferred that the Commission can entertain non-compliance complaints, adjudicate the grievances and decide the matters brought before it, in terms of the provisions contained in the Act (CIC, n.d.). However, there is no foolproof mechanism to ensure that the information seeker will definitely get the required information after the hearing of her/his non-compliance application (CIC, 2017).

vi) **Low Proportion of Imposing Penalties by the ICs**

Laxity in terms of exercising their powers to ensure proper implementation of the law is also a major cause of concern. Section 20 of the RTI Act empowers Information Commissions to impose penalties of upto Rs. 25,000/- on erring Public Information Officers (PIOs) for violations of the RTI Act. This penalty provision gives teeth to the RTI law. However, studies have indicated that the Information Commissions have been extremely reluctant to impose penalties on erring officials for violations of the law.

The study by SNS & CES (2019) indicates that a very small proportion of the penalties were imposable under the RTI Act. For the period January 1, 2018 to March 31, 2019, 25 Commissions, had imposed penalty in 2,455 cases (appeals and complaints). Penalty amounting to Rs. 3.15 crore was imposed by the Commissions. The study indicates further that penalty was imposed by the Information Commissions only in 1.8 percent of the cases disposed. Of the 21 Commissions studied, only 9 had invoked their powers to recommend disciplinary action. There is thus, loss of deterrence value that the threat of penalty was supposed to bring in. There is a direct correlation between the number of penalties imposed and the willingness of the PIOs to make information available, and the number of appeals and complaints that land up with the Information Commissions.

vii) **Disclosure of Information on Website**

The studies indicate, while all the ICs had their own official websites. However, there was considerable variation across the ICs on the availability of information and the ease with which the website can be navigated and searched. The information on several websites was not updated, and hence misleading. Unfortunately, many of the Information Commissions do not themselves follow the requirements of Section 4 of the RTI Act. Most of their websites are outdated with very sparse details and much of the required information missing. There is delay in uploading of annual reports by many SICs. The Cause list, Disposal and Pendency Statistics are also not uploaded on many IC websites. To ensure transparency in the functioning of the ICs, it is required that each Information Commission must ensure that all important information must be displayed on their websites. This includes up to date and real-time information about the receipt and disposal of appeals and complaints, and copies of orders passed by the Commissions.

Check Your Progress 2

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

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

- 1) Discuss the working of Information Commissions.

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- 2) Examine the constraints and challenges being faced by the Central and State Information Commissions in implementation of the RTI Act.

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- 3) Write a note on background of the Information Commissioners.

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7.6 CONCLUSION

Various emerging issues have been observed while implementing the RTI Act. With increasing need of good governance, anti-corruption initiatives and participation of the public, there is a need of an awareness drive to sensitise the citizens and Public Authorities about the RTI Act. The CPIOs are not adequately trained, and consequently the quality of their replies given to the applicants is adversely affected. The CPIOs are not motivated; they have fear of punishment but no hope of incentives. The ineffective implementation of Section 4 is a major concern area. This is leading to citizen asking for information, which should have been automatically put in public domain. The digitisation of records, need for better record management and obligation of Public Authority to publish such records/manuals on a regular basis is another issue, which is hampering free flow of information. All these issues need to be looked into for better implementation of the RTI Act.

Besides ensuring adequate measures for implementation of the RTI at authority level, it is equally important to strengthen the Information Commissions. Though the RTI Act gives a fair amount of authority to the Information Commissions, however, most of them are not able to fully exercise this authority or meet fully their various legal obligations, because of various constraints like lack of resources, infrastructure, etc. This is causing delay and pendency. If the ICs cannot decide the appeals/complaints within a reasonable period, it forfeits the purpose of the Act. Early disposal by the Information Commissions will help citizens in quick grievance redressal and encourage the Commissions to make concerted and sincere efforts to speed up the disposal of registered cases.

Most Information Commissioners have no legal background, and therefore, a system needs to be there by which they are oriented and trained. Strengthening the Commissions through resources and capacity building is the need of the hour. A scheme needs to be adopted for proper infrastructure and resources to make them more effective and efficient. Further, the good practices being adopted by some of the ICs should be disseminated to enable others to learn from each other's experiences. Certain amount of autonomy in financial and administrative matters should also be provided to the ICs.

7.7 GLOSSARY

Proactive disclosure: It refers to the act of releasing information, before it is requested. In this regard Section 4(1)(b) of the RTI Act, 2005 lays down the information that should be disclosed by the Public Authorities on a proactive basis; and Section 4(3) prescribes wide dissemination of information, in such a way that it is easily accessible for public.

Erring: It refers to officers/administrators who have failed to adhere to the proper or accepted standards; have done wrong.

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7.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Duty to maintain and supply Information
 - Record management
 - Proactive disclosure of Information
 - Dissemination of Information
 - Publication of facts about policies and decisions
 - Providing reasons for decisions
 - Designation of Information Officers

- Implementation of decisions of Information Commissions.
- 2) Your answer should include the following points:
- Public Authorities refusing to be “Public”
 - Proactive disclosure of information
 - Poor record management
 - Lack of training
 - Lack of awareness among citizens.
- 3) Your answer should include the following points:
- Refer Section 7.3(ii).

Check Your Progress 2

- 1) Your answer should include the following points:
- Refer Section 7.4
- 2) Your answer should include the following points:
- Dependence on the Government for financial and infrastructural support
 - Vacancies in the Information Commissions
 - Background of the Information Commissioners
 - High pendency of cases and delay
 - Non-compliance and enforcing orders of the ICs
 - Low proportion of imposing penalties by the ICs
 - Disclosure of information on website.
- 3) Your answer should include the following points:
- Refer Section 7.5 (iii).

UNIT 8 THE RTI ACT, 2005: CONSTRAINTS IN ITS IMPLEMENTATION AT THE DISTRICT LEVEL *

Structure

- 8.0 Objectives
- 8.1 Introduction
- 8.2 Nature and Ambit of District Administration
- 8.3 Main Features of the RTI Regime
- 8.4 Ambivalence in the Act and its Functional Process
- 8.5 Implementation of the RTI Act at District Level: Major Constraints
- 8.6 Effective Implementation of the RTI Act: Removing Roadblocks
- 8.7 Effective Implementation of the RTI Act: Road Ahead
- 8.8 Conclusion
- 8.9 Glossary
- 8.10 References
- 8.11 Answers to Check Your Progress Exercises

8.0 OBJECTIVES

After studying this Unit, you should be able to:

- Explain the structural and functional dimensions of District Administration in India;
- Discuss the significance of RTI regime in participatory governance;
- Describe the main features and deficiencies of the RTI Act;
- Examine the constraints in implementation of the RTI Act at the District Level; and
- Suggest necessary measures for removing roadblocks; and the way forward for effective implementation of this Act at the District Level.

8.1 INTRODUCTION

The Right to Information has been identified as an indicator of inclusive governance as it ensures participation of the citizens in this process. The periodic elections alone are not enough for ensuring it. Their continuous

*Contributed by Dr. Rajiv S. Dhaka, Senior Faculty Member, HIPA, Gurgaon, Haryana.

legitimisation can be ensured only by making the citizens a part of the decision-making process. The most cost-effective way to do so is to freely share all the information about the functioning of government with citizens. This shall not only enable the citizens to know the basis on which decision-making had been done by the government but also provide them an opportunity to question the working of government in a sustainable manner. Therefore, the Right to Information Act, 2005 has marked a paradigm shift in Indian democracy by providing an unrestrained access to information to the citizens.

The institutionalisation of the RTI regime has, therefore, to be recognised as a far reaching step towards the deepening of democracy in India. It is pertinent to highlight, in this context, the fact that the Constitution of India had only introduced the parliamentary democracy at the national and the state levels in 1950; and the 73rd and the 74th Constitutional Amendments had merely created the grassroots democracy in the rural and urban areas. The participatory democracy has been introduced in India only by the Right to Information Act, 2005, which sought to make governance accountable at all the levels. This Right, however, is not only a basic pre-requisite for good governance but also for the realisation of basic Human Rights, including the Rights to Education and Health Care.

This landmark legislation has enabled the common citizens to participate enthusiastically in the process of governance by exercising their right to seek information from the government and its agencies. Besides empowering the citizens, the Act has also fixed the responsibility on the officials for timely delivery of information to the information seekers. These measures, in the long run, aimed at curbing corruption.

The institutionalisation of this regime had created a sort of euphoria regarding the dawn of a participatory, responsive, sensitive, humane, honest and a people friendly regime at all the levels of governance from top to the bottom. Although it can be stated without hesitation on the basis of the working of the RTI regime for a period of more than 15 years, that transparency has remained elusive to a great extent because the centuries old culture of secrecy inherited by the bureaucracy from the colonial era has not been wiped out so far. Consequently, good governance remains an unfinished agenda, despite the efforts for “maximum governance & minimum government and zero tolerance for corruption”.

This leads to a valid question as to what are the key reasons for the persistence of this scenario. An attempt has been made in this Unit to try to answer this question. One of the major reasons for the non-fulfillment of the promise of good governance in India through RTI regime has been the governance at cutting edge, the district administration. It continues to remain

structured in the colonial mode. Therefore, an attempt is being made to trace the constraints in the way of implementation of the RTI Act at the district level. This Unit focuses on the structural and functional dimensions of the District Administration in India; describes significance of the RTI regime in participatory governance; highlights the main features and deficiencies of the RTI Act; brings out the constraints in implementation of the RTI Act at the district level; and in the end, suggests necessary measures for removing road blocks and also the way forward for effective implementation of the RTI Act.

8.2 NATURE AND AMBIT OF DISTRICT ADMINISTRATION

The district administration has continued to be responsible for the functioning of Police, Jails, Revenue, Public Health, Food and Supplies, Social Welfare and Child Development, Urban Local Governance, Town Planning, Development and Panchayati Raj and other departments at the cutting edge of state administration.

Besides for the following areas, district remains as the main operational unit of governance:

- i) District level offices and staff of various departments of state government and public sector enterprises.
- ii) Development agencies like the District Rural Development Agency, the Panchayati Raj Institutions and the Urban Local Bodies.
- iii) Various agencies responsible for Implementing Special Projects/ Programmes for meeting specific objectives.
- iv) Officers of the Central Government organisations at the district level.
- v) Machinery for the maintenance of Law and Order.
- vi) Institutional Credit System.
- vii) Cooperative institutions working in various sectors like dairy, agriculture and minor irrigation, etc.
- viii) Community Based Organisations.
- ix) Trade Channels.

The Chief Minister's Secretariat and the heads of the various departments in the State Secretariat have to operate through the district administration for the implementation of their decisions. Therefore, a transparent working of the district administration is the basic requisite for good governance for the people. An effort has been made in this Unit to identify the constraints in the implementation of the RTI Act in the district administration. However, prior

to this, it is essential to describe the main features of the RTI regime, and hence, an attempt is being made to do the same.

8.3 MAIN FEATURES OF THE RTI REGIME

The citizens of India have been empowered by the RTI Act, 2005 to seek information from the Public Authorities at the Union, State, District and Sub-District levels (the Sub-Divisions/Tehsils/Talukas) as well as from the Panchayati Raj Institutions at the District, Block and Village levels (Zilla Parishad, Panchayat Samiti and Gram Panchayat) and the Urban Local Bodies (the Municipal Corporation, Municipal Council and Nagar Panchayat) and the Cantonment Boards, District Rural Development Agencies, Urban and Rural National Health Missions, and all the Cooperative bodies such as Central Cooperative Banks and Agriculture Rural Development Banks, etc. The Act is also applicable to the public authorities, government funded NGOs and the private institutions, wholly or partially owned, controlled and directly or indirectly financed substantially by the National or State Governments. It also empowers the information seekers to seek third party information as well.

For an effective operation of the Act, it has been made mandatory for all the public authorities to proactively disclose information about themselves through their websites, publications and at the public places such as their notice boards, hoardings and walls, etc. They are also required to maintain their information in the software as well in a systematic manner so that these could be accessed whenever demanded by the information seekers.

It has also been made obligatory for the public authorities at the Central, State and the Sub-state levels to ensure supply of the information by appointing the Public Information Officers (PIOs), Assistant Public Information Officers (APIOs) and First Appellate Authorities (FAAs), having a clear-cut definition of their functions. An appellate mechanism has also been prescribed at the Central and the State levels through the constitution of Information Commissions for adjudicating appeals against the orders of FAAs. These Commissions have also been deemed as independent, non-judicial authorities. However, they have also been vested with powers of a Civil Court in the exercise of their role of enquiring into the complaints made against the information providers by the complainants/information seekers and to penalise the erring officials for delayed or malafide and erroneous information. The Commissions can also recommend departmental disciplinary action against the defaulters.

8.4 AMBIVALENCE IN THE ACT AND ITS FUNCTIONAL PROCESS

Some glaring deficiencies of the RTI Act have emerged during the past 15 years. These are too glaring to be ignored as these have impeded the desired implementation of the Act. For example, the term “substantially financed” has been used in an ambiguous manner. More importantly, even the terms like “Life and Liberty”, which are the basic requisites of a regime committed to the establishment of Human Rights regime also remain ambiguous. Similarly, considerable confusion continues to persist regarding the powers, roles and responsibilities of the First Appellate Authority because these have not been clearly explained.

The confusion is further compounded due to overlapping grounds for appeals and complaints. Moreover, the contempt provisions are conspicuously absent or remain understated. Complete silence over the time limit for deciding an appeal by the Information Commission is, undoubtedly, a significant fallacy that often defeats the very purpose of the law. Last but not the least, the appointment of Information Commissioners (ICs) too leaves much to be desired in some instances. They are usually picked up from amongst there tired bureaucrats for their loyalty rather than on the basis of merit. The maiden amendment done to the RTI Act in 2019, which has given the power to determine the salaries, allowances and other terms and conditions of service of the Central and State Chief Information Commissioners and the Information Commissioners to the Central Government is also likely to weaken the Commissions and may adversely affect their neutrality in discharging their duties.

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) Write a note on nature and ambit of district administration.

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2) Discuss the main features and deficiencies in the RTI Act, 2005.

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8.5 IMPLEMENTATION OF THE RTI ACT AT DISTRICT LEVEL: MAJOR CONSTRAINTS

The real importance and necessity of having an effective RTI regime can be understood in the context of the above stated myriad functions being discharged at the district level of administration. Only a smooth and earnest rollout of the law at this cutting edge level can serve the lofty ideals of accountability and transparency, which have been enshrined in the Act. Besides the above mentioned hierarchical and procedural pitfalls, there are large number of other factors that hamper the needed implementation of this statute. On the basis of the experience of implementation of the RTI Act in the last 15 years; and findings of various empirical studies that have been carried out by various NGOs, institutions and individuals, the constraints in the implementation of the RTI Act at the district level may be summarised as under:

i) ***Behavioural Issues***

Although the RTI regime has been put into place in all the departments of the district administration of various states, but they have not been working as per its spirit. The officials at the district level have so far not been able to imbibe the culture of transparency which the RTI Act, 2005 sought to inculcate in them. They are still to shed their hackneyed mindset of confidentiality, and opaque procedures, arbitrariness and lack of accountability. They are also yet to fully come to terms with the needed culture of transparency for the empowerment of the citizens by providing them the information sought. The resistance to new role starts with the appointment of the State Public Information Officers (SPIOs), as many unwilling persons are appointed for this role without seeking their assent.

Almost all the departments of the district administration – barring a few exceptions – have not been able to get rid of the colonial culture of secrecy and are rather reluctant to give the desired information to the information seekers and they merely follow the letter of the RTI Act and do not follow its true spirit. The SPIOs consider this role as an additional, and a thankless burden. In this regard, most of them perform their role rather reluctantly out of compulsion and not out of choice because they do not get additional financial benefits for these additional responsibilities.

ii) ***Lack of Capacity***

The official appointed as SPIO or ASPIO is supposed to have adequate knowledge about the Act and its various procedures and processes. The task cannot be carried out merely by using the commonsense or administrative experience of general nature. As a matter of fact, they are mostly found lacking in aptitude as well as incompetence for the performance of this important role as they have not been subjected to the needed capacity building by the Training Institutions. The officials are also reluctant to get training on the RTI Act because they do not want to be appointed as SPIOs. It has also been observed that these officers also show reluctance in attending the RTI training programmes, since it adds to the pendency of their regular deskwork. They are also apprehensive that they would continue to remain as the SPIO, if they get trained in it.

The ambiguity and lack of clarity in meaning and the implications of some of the clauses and sub-clauses of the RTI Act and the conflicting decisions of the Information Commissioners as well as divergent interpretation by the High Courts in their decisions too have made the role of the SPIOs rather difficult.

iii) ***Administrative Issues***

The shortage of staff has also affected the efficacy of RTI regime. Some of the SPIOs lament the frequency of applications, which they feel are made by some RTI activists for troubling them. Besides, relatively junior officers in the departments are appointed as the SPIOs who have to perform their role as per the directions of their superior officers instead of acting in a judicious and fair manner.

The SPIOs are neither able to get adequate support from their superiors nor the needed assistance from the ASPIOs and other colleagues for the performance of their role. They are often not even provided adequate infrastructure like photocopier, faxmachine, separate office, secretarial assistance, computers, internet facilities, etc. The culture of departmentalisation, i.e. tendency of the superior officers to protect their subordinates instead of hauling them up for the supply of delayed or incomplete or vague information to the information seekers also prevents them from performing their role in a judicious manner.

The First Appellate Authorities of the various departments of the district administration feel burdened by their official duties that they are left with little time for the application of their mind to the First Appeals made by the information seekers/appellant against the decision of the SPIOs of their departments.

iv) ***Procedural Issues***

Above all, the absence of a time limit for deciding the Second Appeal of the information seekers against the decisions of the First Appellate Authorities have proved to be a great hurdle in the way of an effective RTI regime. The divergent and contradicting judgments by them have further added to the confusion. These have adversely affected the roles of the SPIOs as well as the information seekers.

To avoid confusion in depositing fee, there should be a Receipt Head in every Public Authority to which the application fee could be credited. Instead of the bank drafts prescribed in some of the states, payment should be allowed through postal orders, cheques, non-judicial stamps and debit and credit cards of the Banker.

v) ***Suo Moto Information***

The obligation of public authorities under Section 4(1)(b) of the RTI Act, 2005 for self-disclosure of information is being rarely followed. The very intent of this section was to reduce citizens' queries by voluntarily giving the most common and germane information about the particular Public Authority. But their websites are either non-existent or are not updated. Even the names, phone numbers and addresses of their SPIOs, ASPIOs and the appellate authorities are often not put in public domain. The Public Authorities at the district level have, in some cases, not displayed the names, contact number, designation and other details of all the three RTI functionaries, SPIO, ASPIO and FAA on their websites or notice boards.

vi) ***Railway Coach Syndrome Psyche***

Awareness on the RTI Act has also been suffering from "Railway Coach Syndrome" wherein the passengers of an overcrowded Railway Coach are reluctant to let the new passengers get in to it and once a new passenger gets in, s/he also shows the same behaviour. Similarly, an official who has undergone training and has knowledge of the RTI Act is not willing to disseminate the same to others.

vii) ***Non-Cooperative and Unhelpful Attitude of the SPIOs***

As per the mandate of RTI Act's Section 7(9), ordinarily information has to be provided in the requested form unless there is disproportionate diversion of the resources of the Public Authority or it is deemed as detrimental to the safety of records. Uncanny habit of providing information in the form of other than requested one, especially allowing the inspection instead of providing of xeroxed copies, causes a lot of

inconvenience for the information seekers. Moreover, they are also not properly assisted or helped by the SPIOs during inspection.

Above all, majority of the people are unaware of the method of drafting the RTI application as the efforts have not been made by the Public Authorities to educate the masses despite the mandate under Section 4 of the RTI Act. At the same time, despite the mandate under Section 6(1) (b), the SPIOs are also not rendering any help to the ignorant information seeker in writing down their applications. This has resulted in considerable hardships for them in filing of the RTI Applications.

viii) ***Record and Retrieval Issues***

The SPIOs are handicapped due to poor maintenance of records and many a times it is difficult to timely compile the information requested by the information seekers. If the record is not properly maintained, unnecessary confusion and tension are faced by the SPIOs in gathering the required information sought from them under the RTI Act. Then, there are also some practical problems relating to files pending with the higher authorities, or have been wrongly classified and indexed. All these issues become a major problem for the SPIOs, who have to work against a deadline. This may taint the image of the particular Public Authority in the eyes of information seekers.

ix) ***Frivolous Demands***

Sometimes the role of SPIOs is also made very difficult by the demands for information due to ulterior motives such as on account of personal jealousies or professional or political rivalries among the members of the staff of their departments.

Besides, the information seeking has also been made the main or a supplementary profession by some legal practioners and social activists. Whereas most of the information seekers continue to remain apathetic towards the RTI regime and are reluctant to perform their duties and demand their entitlements under the new dispensation on account of either apathy or ignorance or both.

x) ***Apathy in Information Seekers***

It is pertinent to mention that the information seekers from Below Poverty Line (BPL) families have been exempted from the payment of fee and other charges. But this provision is often being misused by unscrupulous persons, so much so that the BPL information seekers are being used in some cases by the unscrupulous elements for hiding their identity and for escaping payment of fee and other charges.

8.6 EFFECTIVE IMPLEMENTATION OF THE RTI ACT: REMOVING ROADBLOCKS

The RTI Act, 2005:
Constraints in Its
Implementation at the
District Level

Certain simple yet concerted steps are needed at various levels to tide over these problems, which have so far remained a potent impediment in implementation of free flow of information. The scope of “suo moto” disclosure of information by public authorities needs to be expanded to minimise citizen’s resort to the RTI for getting the information needed by them. Extensive use of Information Technology could also be made for addressing obligations related to the suo moto disclosures.

There is also the need for substantial role clarity in the RTI mechanism. The primary responsibilities of RTI implementation should not be left to the SPIOs alone. The Public Authority and the First Appellate Authority should also be made accountable in this context. The State Information Commission should be empowered to ensure that public authorities take initiatives. The role of the First Appellate Authority should not be confined to mere disposal of appeals. S/he should also act as a friend, philosopher and guide for the SPIO. Wherever necessary, the SPIO should be relieved of the extra burden to enable them to focus on their role as the SPIOs. A separate cadre may be formed like the other state services at the different levels in the state and named as Public Information Service. The role of Information Commissioners should not be limited to deciding the Second Appeals. They should also be mandated to periodically inspect the offices/ SPIOs and make surprise checks so that the SPIOs remain alert in the performance of their duties. The compensation provisions too should be invoked frequently by the Information Commission against Public Authorities for their failure in this context.

A three-pronged approach is needed for tackling the problem of ineffectiveness of the RTI Act. The first is to fine tune procedural requirements for the disposal of complaints and appeals. The second is to strictly impose penalties for non-compliance. The third one is that of systemic addressing of the key problems.

A quick review of the Rules framed under the Destruction of Records Act, 1917 must also be undertaken. Besides, the records of the Government offices need to be digitised and indexed for easy retrieval. Clear cut accountability must be fixed for the delays or non-traceability of the lists of the document.

The Central Information Commission and the State Information Commissions must use the powers of monitoring and reporting given to them under Section 25 of the RTI Act for ensuring satisfactory compliance. The Information Commission also be given a separate set up with adequate staff.

They may also be authorised to engage the services of retired officers and renowned members of the Civil Society for assisting them.

Be that as it may, all the information seekers should not be dismissed as blackmailers as some of them have rendered exemplary service by exposing the cases of high handedness and corruption. A few of them had also to pay heavy price for their deeds.

8.7 EFFECTIVE IMPLEMENTATION OF THE RTI ACT: ROAD AHEAD

- i) The Government of India must make suitable amendments in the RTI Act, 2005 for removing ambiguities, confusion and contractions that have surfaced during the operationalisation of the RTI regime.
- ii) At least, a Gazetted level officer should be appointed as the SPIO. S/he may be given enough powers and authority to command cooperation in discharging her/his RTI related role. Competence and aptitude must be the criteria for appointing the SPIOs in the departments at the district level. They must be given additional allowance as an incentive for discharging this responsibility, besides recognition and rewards for outstanding performance to keep others inspired.
- iii) The Deputy Commissioner/Collector/District Magistrate must hold an annual meeting of the SPIOs and FAAs of the departments preferably on 12th October in commemoration of operationalisation of the RTI Act. The officials may be encouraged to share their experiences and to highlight their problems on the occasion for their systemic resolution.
- iv) Online programmes/courses may be organised for updating IT skills of the officers and ministerial staff of various departments in general and their SPIOs in particular. Inculcation of the aptitude of IT and increased proficiency in IT skills could go a long way in archiving and retrieval of records in electronic format. This shall facilitate the work of the SPIOs and the other deemed PIOs.
- v) Most importantly, the RTI should be made a compulsory component of all the pre-service and in-service training courses for the officers and functionaries at the district and the sub-district levels for containing the culture of secrecy. Moreover, special training programmes should be organised for the Capacity Building of the SPIOs, ASPIOs and FAAs.
- vi) Civil society may be involved in creating awareness among the masses by organising “Awareness Programmes” through Documentaries, Short films and other modes. The services of folk singers may also be utilised. The holding of Nukad Nataks too could prove useful in this context.

- vii) The Right to Information may be made a compulsory component of the syllabi of social sciences at the middle, secondary and high secondary levels. The schools may be encouraged to organise exhibitions, quiz competition and hold tests for checking the level of awareness of the RTI among the students and also give prizes to those among them who excel in these.
- viii) Some mechanism also needs to be put into place to penalise those who misuse this right because the Below Poverty Line (BPL) clause is often misused for seeking information without making the payment for the application cost.
- ix) While the genuine information seekers need to be encouraged and the blackmailers must not only be identified but also penalised under various Sections of IPC for harassing the officials or the colleagues. This is essential to prevent the misuse of the RTI Act. However, this suggestion should be carried out with utmost care and sensitivity lest it dissuades and harasses the genuine information seekers and the public spirited social activists.

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) Highlight the constraints in implementation of the RTI Act at the district level.

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- 2) Suggest necessary measures to remove constraints for effective implementation of the RTI Act at district level.

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8.8 CONCLUSION

Be that as it may, the representative democracy of India is likely to be undermined without sufficient information. Transparency and the right access

to information are the two useful instruments that democratic state uses to equip the citizens to participate meaningfully in the development process, which has undoubtedly been strengthened by the RTI Act. However, it is essential to introduce some correctional changes in those provisions that have created ambiguity and have made a negative impact on the free flow of information. The RTI regime needs to be strengthened for cementing the foundation of Indian Democracy, which has been currently endangered by the on-slaught of retrograde trends that have come to the fore in the recent times. It is rather encouraging that the present political dispensation is strongly committed to it and the public is in no mood to forgive those who are trying to sabotage the RTI regime. But at the same time, there is an urgent need for changing the mindset of the bureaucracy and enhancing the capacity of the masses in this context.

From the above discussion and analysis, it could be concluded that the district administration needs to be made more accountable, responsive, responsible, sensitive and people friendly by strengthening of the RTI regime. It has certainly been able to introduce some degree of transparency. Still, it is incumbent upon all the stakeholders – the Government of India, the Government of the states and the District Administration to plug the loopholes and strengthen as well as streamline the RTI regime by removing ambiguity and confusion regarding some of the clauses and sub-clauses of the Act. The district level offers the direct interface between the administration and the people. Unless this base is strengthened, the super structure shall remain weak. The base could be strengthened through capacity building and by changing of the colonial mindset. The Prime Minister's call, *Sab Ka Sath, Sab Ka Vikas* (Cooperation from all and the development of all) can be converted into an actionable reality from a mere rhetoric if we have a transparent, people friendly and sensitised regime at all levels of the government.

8.9 GLOSSARY

Appellant: A person who applies against the decision of the SPIO to the FAA or Information Commission, as the case may be.

Complainant: Complainant is the person, who is aggrieved with non-supply of information in time or with the behaviour of the information provider / SPIO.

District Administration: It refers to the official set up of the Government at the district level.

Information Seeker: Information seeker is a person who applies for information to the SPIO under the RTI Act.

PRIs: It refers to the Panchayati Raj Institutions that are rural local self-government institutions, viz., Zilla Parishad, Block Samiti and Gram Panchayat.

ULBs: It refers to the Urban Local Bodies (ULBs), which provide civic services in the urban areas, namely Municipal Corporation, Municipal Council and Nagar Panchayat.

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8.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include following points:
 - Refer Section 8.2
- 2) Your answer should include the following points:
 - Refer Sections 8.3 and 8.4

Check Your Progress 2

- 1) Your answer should include the following points:
 - Refer Section 8.5
 - Refer points from Conclusion (Section 8.8).
- 2) Your answer should include the following points:
 - Refer Sections 8.6 and 8.7
 - Refer Section 8.8

UNIT 9 ROLE OF MEDIA *

Structure

- 9.0 Objectives
- 9.1 Introduction
- 9.2 Media, RTI and Good Governance
- 9.3 Role of Press Council of India in Framing the RTI Law
- 9.4 RTI, Media and Judiciary
- 9.5 Role of Media in Promoting RTI
- 9.6 Importance of the RTI Act for Media
- 9.7 Appraisal
- 9.8 Conclusion
- 9.9 Glossary
- 9.10 References
- 9.11 Answers to Check Your Progress Exercises

9.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the importance of media in good governance;
- Describe the role of media in enacting the RTI Act, 2005;
- Explain the role of media in protecting and promoting RTI;
- Examine the role of the RTI Act in performance of media especially in extracting information; and
- Bring out the challenges for media in accessing the RTI.

9.1 INTRODUCTION

The Right to information Act, 2005, which became fully effective from 12th October, 2005, is one of the most noteworthy legislations enacted by the Parliament of India. The Act enables the establishment of an unprecedented regime of right to information for the citizens of the country. It overrides the “Official Secrets Act” and similar laws/rules. It strikes at the heart of the paradigm long practiced by the Government officials and public

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

functionaries, “*confidentiality is the rule and disclosure is an exception*”. The Act seeks to establish that “*transparency is the norm and secrecy is an exception*” in the working of every public authority. It aims to ensure maximum openness and transparency in the machinery and functioning of the Government at all levels– Central, State and Local. The media is regarded as the fourth estate of a democracy. They have the ability to get more reliable sources of information from the government agencies and create a sense of social awareness among the people about participatory governance and development. The media are required to play a crucial role in sensitising various stakeholders of good governance about the utility and relevance of new legislation.

The Universal Declaration of Human Rights (Article 19) states, “*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The media have an essential role in the development of the Information Society and are recognised as an important contributor to freedom of expression and plurality of information*”.

In fact, mass media is the most important vehicle for information, knowledge and communication in a democratic polity. They are pervasive and play a significant role in shaping societies, and they provide the public sphere of information and debate that enables social and cultural discourse, participation and accountability.

They are the most accessible, cost-effective and widespread source of information and platform for expression. Information is power. The media can play a crucial role in building an inclusive Information Society based on knowledge power and its distribution.

The Unit aims to analyse the role and importance of media in governance through the RTI. This Unit also recognises the contribution of media in enacting the Right to Information Act, 2005. It reflects how right to information law helps the media to uncover the “Maladies and Flaws” prevalent in various organs of the Government, and role played by media to bring sensitiveness on various issues among the masses having ramifications on their social life. It deliberates how the RTI Act helps in getting access to court proceedings and parliamentary processes and how different Government institutions can be approached for relevant information. Further, this Unit also analyses the role of media in highlighting the issues of public importance through the RTI. It brings out its constraints and challenges in accessing justice for the people. At the end, it suggests that with concrete efforts and restraint attitude media can help in bringing the RTI regime in true sense.

Let us first understand the meaning of Media and what is comprehended by freedom of media. The term media covers both, print and electronic media, including the internet. Even motion pictures are also to be included. So far as media freedom is concerned, it includes editorial freedom, freedom of circulation, the freedom to decide volume of the magazine or newspaper and freedom of means necessary for the exercise of right.

Freedom of expression has four broad social purposes to serve— (i) it helps an individual to attain self-fulfilment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual for participating in decision-making, and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. “All members of a civilised society should be able to form their own beliefs and communicate them freely to others. In a democracy the fundamental principle involved is the people’s right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration” (Indian Express Newspapers (Bombay) Pvt. Ltd. Vs. Union of India).

Right to Information is a fundamental human right, crucial to human development, and a prerequisite for the realisation of other human rights: civil and political rights such as the right to life and liberty, freedom of expression and equality before the law; and economic, social and cultural rights such as right to adequate food, right to water, right to highest attainable standard of health and right to education.

Justice Sawant, speaking in a workshop, remarked, “*The Right to Information should not be seen as an additional subject, but as a means of availing fundamental rights. Fundamental rights like Article 19 (freedom of speech and expression) are declaratory in nature and do not provide any means for their enforcement or implementation. Those who have the means have availed of these rights so far, in the absence of enabling laws*”(CHRI & YASHADA, 2005).

We all are very much aware of the importance of institutions in social life of any nation. These institutions help people to come together and work for the common goal and common good. The two most vital organs of any institution are transparency and accountability. The Right to Information Act, 2005 mandates establishment of the Central and State Information Commissions both at the Central and State Government levels respectively. These are *formal institutions*, which ensure transparency and accountability of the government officials; and people can exercise their right to information through these institutions. On the other hand, *Media – the fourth pillar of*

democracy is an informal institution, which plays the role of a “monitor” amongst different organs of the state and society. Evaluation of the public authorities and governance is impossible without factual, current/updated and primary information. The public authorities always guard each information, with the weapon of Official Secrets Act and with constraints given in the Constitution. Therefore, the rights of the citizens remain confined. Similarly, the judiciary has the Contempt of Court provisions and the legislature have the parliamentary privileges.

The major characteristics of good governance are – participation, rule of law, transparency, responsiveness, equity and inclusiveness, effectiveness, efficiency, accountability, strategic vision and consensus-orientation. In order to ensure transparency in the system, government resolutions must be arrived at openly in accordance with rules and regulations. The Government must also ensure that all information should be made available to people as per section 4(1) of the Right To Information Act, 2005. Besides, it is the responsibility of “the appropriate Government to compile, in its official language, a guide containing information, in easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified under the Act (Section 26(2))”. This guide should also be made available to all the stakeholders and the media. It is pertinent to point out that transparency ensures accountability by the public institutions and its functionaries.

There is a direct relationship between right to information, media and good governance. With the help of right to information, media can expose corruption, unfair and restricted trade practices, embezzlement, organised crime, deplorable conditions of inmates of prisons, shelter homes, mental asylums, cases of custodial violence, infringement of legal rights of vulnerable sections of society, etc. With investigative journalism, media can assure good governance by putting an end to corrupt government practices and establishing a responsive State. The essentials of good governance – maintenance of rule of law, freedom of expression, forming association, people’s participation in administration can be realised if the right to information is implemented in the right spirit.

The system of Government is very opaque. It is impossible for the journalists to go into the depth of any matter properly under the possession of Government and its instrumentalities. But now, with the enactment of Right to Information, it has become a tremendous weapon for the common people and the media as well. In order to ensure transparency, a balance has been struck between the needs of the administration and rights of the media by allowing them access to court proceedings, live telecast of Parliamentary proceedings, visit to prison inmates, orphanages, mental asylums and shelter homes for women destitute. Normally, “these institutions cannot be visited in

the same manner and with same ease as one may visit an open exhibition” (Rai, 2011). But, media can enter these institutions and report the findings to the public at large.

9.3 ROLE OF PRESS COUNCIL OF INDIA IN FRAMING THE RTI LAW

The media also realised the significance of right to information from the point of view of good governance and judicious development in India. Eminent journalists namely, Nikhil Chakravarthy, Kuldip Nayyar, Ajit Bhattacharjee and Prabhash Joshi visited Beawar to join the RTI campaign of Mazdoor Kisan Shakti Sangathan (MKSS). They also facilitated national coverage and enabled the activists of right to information movement to place the demand in a wider perspective. As a part of its mandate to create awareness about media related issues, the Press Council of India (PCI) has been organising seminars and workshops in different parts of the country. Special reference can be made to the seminars on “Press as a leader of the Society”, held on March 23-24, 1996, workshop on “Right to Information” on August 10-11, 1996. The Council celebrated “National Press Day” to commemorate 30th anniversary of the Press Council by organising two-day seminar on November 16-17, 1997 in New Delhi on “50 Years of Press in India” and “Right to Information”.

The *first major draft legislation on RTI was circulated by the Press Council of India in 1996*. This bill was ardently endorsed by the RTI activists and other participants from political parties. The preamble to this draft acknowledged the fact that the right to information is already ensured under the Constitution of India as part of the fundamental right to free speech and expression. Besides, several Supreme Court judgments also support this. The draft Bill provided for the right of every citizen to information from any public authority. Significantly, the term “public authority” included not only the state, as defined in Article 12 of the Constitution, but also all privately-owned undertakings, non-statutory authorities, companies and other non-state bodies whose activities affect the public interest. Thus, both the commercial sector and non-governmental organisations were included in the ambit of this RTI draft. Certain restrictions were also meant to be imposed on the right to information, as on fundamental rights in the Constitution. An important insertion was, “information which cannot be denied to Parliament or the State Legislature shall not be denied to a citizen”. In the draft, provisions were also included for imposing personal fines on the public officials for failure to supply information. Appeal could also be filed in the civil court against failure or refusal to give requisite information (Sudhir, 2013).

The Press Council of India along with other three collaborators viz., Press Institute of India, The National Campaign of People’s Right to Information

and Forum for Right to Information organised a seminar on the “Right to Information” on 20th February 2000 to press the Government to ensure that the Bill on the said subject be introduced soon without any loopholes in the same. In this regard, a resolution containing proposed amendments to the Bill on the said subject was sent to the Central Government for consideration (Press Council of India, 2009).

In its advisory role, the Council’s opinion has been regularly sought by various instrumentalities of the State on legislative measures either in force or proposed to be introduced. Comments were also sent to the Ministry of Information and Broadcasting on Constitution Review Consultative Committee for insertion of Freedom of Press and Freedom of Information as express Rights in Chapter III of the Constitution.

The Press Council on March 2001, had stated that the Right to Information legislation is very vital for the media. It stated, “At present, one of the stumbling blocks in the path of investigative, analytical and popular journalism is the difficulty in getting access to the official information. The bureaucracy, the police, the army, judiciary and even the legislature guard information regarding even the most mundane subjects with astonishing zeal. Few journalists are able to break this iron curtain of the official non-cooperation. The Right To Information will encourage journalists and society at large to make more questioning about the state of affairs and will be a powerful tool to check the unmitigated goings-on in the public realm and will also promote accountability. No longer will scribes have to depend on conjecture, rumour, leaks and sources other than knowledgeable sources. The legislation, when enacted, will pose an antidote to the vested interest which try to conceal or misinterpret information or which try to manipulate media directly or indirectly to plant misinformation. Through this legislation, transparency in public, professional, social and personal sphere can be achieved” (Legal Junction, 2011).

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 relationship between media, right to information and good governance.

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- 2) What has been the role of Press Council of India in enacting the Right to Information Act, 2005?

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9.4 RTI, MEDIA AND JUDICIARY

Media is defined as the fourth estate and it makes any idea or plan global by its propaganda feature. When an individual or NGO seeks any information and gets it, it is confined only to the seeker of information. But if media gets any information through the RTI or makes any disclosure, it plays a vital role by spreading awareness about that information or event. It is the media, which popularises and tells us everything happening across the country or in the world. Democratic participation presupposes enough knowledge of the facts relating to the working of government and its instrumentalities.

In the leading case of *SP Gupta v. Union of India* (AIR 1982 SC 149), Justice P.N. Bhagwati stated, “*the citizens’ right to know the true facts about the administration of the country is one of the pillars of democracy. The right to information has been recognised by the Supreme Court as fundamental right implicit in Art. 19(1) of the Indian Constitution which includes freedom of press also.*” He further remarked that *where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing*” The “role of media is very significant in achieving the free, fair and real democracy as it puts an additional check on the three official branches – the executive, the legislature and the judiciary” (*New York Times Co. v. United States*). Media provides a forum for free political discussions for the proper functioning of the processes of a popular government and helps in building a strong viable society. Media also influences public opinion and strengthens principles of democracy. The media has now assumed the role of public educator making formal and non-formal education possible in a large scale particularly in a developing country like India.

In *Hamdard Dawakhana v. Union of India* (AIR 1960 SC 554), the Supreme Court maintained that the freedom of speech involves the right to impart and acquire information. In *Sakal News Papers* (AIR 1962 SC 305), the Supreme Court admitted that restriction on circulation of newspapers amounts to denial of right to information. It was held, “the right to impart and receive information from the electronic media is a part to right to freedom of speech

and expression.” In the case of *State of UP v. Raj Narain* (AIR 1975 SC 865), the Supreme Court stated, “The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings”.

Media was always aware about the right to information, as in *Bennet Coleman & Co Vs Union of India* ((1972) 2 SCC 788), a leading newspapers publisher challenged the Government’s policy of restricting the availability of news prints. In its decision favouring the petitioner, the Supreme Court declared, “freedom of speech includes within its compass the right of all citizens to read and be informed and also held that the right to information is included within the right to freedom and speech of expression guaranteed by Article 19(1) (a) of the Constitution”. A dissenting opinion in the same case noted, “the fundamental principal involved here is the people’s right to know”.

In *Printers (Mysore) Ltd. v. Assistant CTO* ((1994) 2 SCC 434), the Supreme Court held, “...the freedom of press has always been a cherished right in all democratic countries”. The Court further observed, “freedom of the press is not so much for the benefit of the press as for the benefit of the general community because the community has a right to be supplied with information”.

In another landmark case of *Secretary, Ministry of I & B, Government of India v. Cricket Association of Bengal* (1995) the Supreme Court held, “The freedom of speech and expression includes right to acquire information and disseminate it. Freedom of speech and expression is important for self-expression and it enables people to contribute to debates on social and moral issues. It is the only vehicle of political discourse so essential to democracy. *The right to communicate, therefore, includes the right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, article, speech, etc.* This is why freedom of speech and expression also includes freedom of press. The freedom of press includes right to circulate and also to determine the volume of such circulation. It also includes the freedom to communicate or circulate one’s opinion without interference to as large a population in country as well as abroad, as possible to reach”.

In the case of *Election Commission of India v MR Vijaya Bhaskar* (LL 2021 SC 244), the Supreme Court held, “*the media coverage of court hearings was part of freedom of press, had a bearing on citizens’ right to information and also on the accountability of the judiciary*”. The Court emphasised, “*Freedom of speech and expression extends to reporting proceedings in judicial institutions as well*”.

Media is a powerful and essential tool in providing information without restriction to the public at large, which is an important requirement for the functioning of a democratic system of a country. People are unable to take part in the affairs of the country, if they are ignorant of the actions of their government. Media is an important medium for the people to know about the activities of their government.

Media plays a very important role in realising the objectives of the RTI Act. It monitors public distribution system, delivery of goods and services by invoking provisions under the RTI Act. Media acts like a bridge between the community and public authority by generating awareness and capacity building through the right to information.

The activist role of media can bring about changes in the lives of the people by making them aware of their rights and entitlements towards government schemes and benefits. Besides, media can organise debates and discussions to stimulate critical thinking on public spirited issues and thus, can create pressure for improving government performance. Investigative media brings out cases of corruption, fraud, waste, inefficiency, favouritism, abuse of power and the like. The media can also play an important role in development and poverty alleviation programmes. It can empower people by becoming their voice and fulfilling their aspirations. It can raise human right issues on various national and international forums. People can also approach media to make their voices heard by the authorities.

Dennis Mcquail (1980) has described media “as engine of change”. It has a transformative role too, it can make people rid of their prejudices and social malpractices. Through RTI, its impact can be seen in highlighting the issues like global warming, genetic engineering, animal testing, deforestation practices, nuclear testing and environmental legislations. The media can be effective not only in preserving freedom but also in furthering it.

Free media is a pre-requisite for good governance. The World Association of Newspapers (WAN), the global organisation of the world’s press has long argued, “a free and unfettered press is a positive force for accelerated and equitable socio-economic development. It held that the predominance of free and independent press accompanies economic growth and human development. In countries with free press, human development indicators such as school enrolment, teacher-pupil ratio, pupil performance, infant mortality, maternal mortality, nutritional status of women and children, etc. tend to fare better than countries with restrictions on press and freedom of information”. The work of the Nobel Laureate, Amartya Sen has even established a link between active media and the avoidance of disasters like

famines. “The role of media as a watchdog of the government and the corporate sector, a transmitter of new ideas and information, a voice of the poor, a safeguard against the abuse of power and neglect of the socially vulnerable, and a builder of public consensus to bring about change is pervasive”(UK Essays, 2017).

In India, press is not absolutely free since they have some reasonable restrictions under Article 19(2) of the Indian Constitution, which makes the RTI an important tool for the journalists. As press freedom is partial the media can use the RTI to get information about the government. The RTI enables media to expose corruption, inefficiency or mal-administration of the government. Under the RTI Act, 2005 the media as well as citizens can demand “government information pertaining to any of its departments, photocopies of government contracts, payment, estimates, measurement of engineering works, government certified samples of materials used in construction of roads, drains, buildings, to inspect any public development work that may be under construction or is completed, to inspect Government documents– construction drawings, record books, registers, status of requests or complaints, details of time delays, actions taken on Information Commission’s decisions, etc.”.

Article 19(1) of the Indian Constitution gives the citizens of India the right to freedom of speech and expression. But this right will be said to be incomplete if it does not include access to information. Right to receive and impart information is an integral part of Article 19(1) but this also comes with reasonable restrictions under clause (2) of Article 19.

The RTI is considered vital for the media and it is an endeavour for the media to be watch dog for the society. It has encouraged the media and the society to think at large and ask questions about state affairs and promoting accountability. The Media can play a very constructive and vital role in the governance process of the country, providing information to the citizens and creating awareness about the RTI Act, 2005. It acts as a catalyst on implementation of the Act, by acting in its role as the fourth pillar of the democracy. It gives voice to the citizens, acting as a watchdog on their behalf.

The only block in the path of journalism has always been not getting access to official information but the RTI Act, 2005 has solved this problem. Yet, there are some government authorities, which have been adamant in denying information by claiming exemptions using various circulars of government departments and court orders. So, it is important for the media to play a good and honest role of a mediator between the government and the citizens to provide information by carefully interpreting facts and evidences while digging out the truth. The media must be free of any bias or favouritism and

should consider its independence as a valuable asset for the citizens making itself to be an agent of empowerment for the society (Law Bhoomi, 2020). If the people find confusion in seeking information, media can explain it very well and can also bring about the essence of the RTI Act to them.

It is a very common thinking in Indian mindset that like other Acts, the RTI is also a puppet in the name of democracy, because when they seek any information either it is not given in stipulated time or refused. But, the credit goes to the media in popularising the fact. Such news items in the media create inclination of people towards the RTI. It is well known now that the RTI has given real power in the hands of Indians after the independence. Today, the RTI is a weapon to realise the dreams of democracy in India. In 2009, RTI Awards were launched by the Public Cause Research Foundation (PCRF) with the Hindustan Times as Media Partner for those who displayed exemplary commitment to the RTI (Hindustan Times, 2009).

9.6 IMPORTANCE OF THE RTI ACT FOR MEDIA

The RTI Act, 2005 is a very important tool for journalists, especially in a country like India where the Press is not absolutely free. If Press freedom is partial, then journalists can use RTI to get important information from the State and Central Governments. The RTI Act of 2005 made it mandatory to give information to those parties who had successfully filed the RTI to government bodies, after paying a prescribed fee. It mandates timely response to any citizen seeking information from the government.

The RTI is considered important for journalists because without this important tool, they would never be able to go in-depth. Even the Press Council has stated that the Right to Information Act is vital for the media and its endeavour to be a watchdog of the society. There are few journalists who are able to break the iron curtain of the official non-cooperation.

The RTI has surely encouraged journalists and society to think large and ask more questions about the affairs of the state and promote accountability. Today, the journalists are no longer required to go by the words of people or rumours. Through RTI, transparency in public affairs can be achieved. Various states across India have a good response to the RTI. This reflects the slow but steady momentum that RTI is gaining. Information is considered to be the oxygen of democracy, where people live freely and information serves greater good. There is direct relationship, which exists between RTI, informed citizen and fair governance. The Right to information gives citizens an opportunity of being informed.

The RTI provides the most genuine form of information. In this regard, with the advent of RTI, journalists are no longer required to simply rely on their personal contacts. Now, news can be more impartial and objective. The RTI is now considered to be a very powerful source of information. It is not only easy to use but it is also reliable, and as such, the editors would hardly question the authenticity of the data obtained through the RTI. In investigative journalism also, it is very important as it provides new leads to curious investigative reporters. It is to be noted that in earlier days, journalists were denied information but today they can obtain the required information through the RTI. Instead of believing rumours, the media can now study the acquired government documents to make their story more credible and interesting. Thus, it is clear that the RTI as a tool stands important to all branches and forms of journalism. It will contribute in developing better relationship between the information seeker and information provider. It is believed that without the RTI, journalists would not have been able to get hard hitting stories, which make people to think and ask questions from the authority.

An RTI regime can enable credible, evidence-based and factual reporting on key issues of public interest. It can enable the media to expose mal-administration, corruption and inefficiency and to propagate stories and instances relating to accountability, transparency, effective administration and good governance. By using the RTI Act, the media can play an important role in highlighting issues related to public service delivery and the efficacy and accountability of public officials. Under the RTI Act, the journalists and reporters, like citizens, can demand information from the Government pertaining to any of its departments, photocopies of Government contracts, payment, estimates, measurements of engineering works, the certified samples of materials used in the construction of roads, drains, buildings, etc. It can inspect any public development work that may be still under construction or completed, inspect Government documents – construction drawings, record books, registers, quality control reports. It may also demand status of requests or complaints, details of time delays, action taken on Information Commission's decisions, etc. (AIR 1975 SC 865).

In a workshop, Justice Sawant remarked, *“with the right to information on their side, the media need no longer depend on questionable sources of information, and can use RTI Act to access credible and authentic information. This legislation is a powerful tool in the hands of the media to get the required information within a definite time period by applying for it. The right to information heralds a new age of investigative and authentic journalism”* (CHRI & YASHADA, 2005).

i) ***Access of Media to Court Proceedings***

Right of speech and expression including that of the press can be limited both to accommodate the special needs of administration of justice, and special claims of the legislative chambers as part of their legislative privileges. As far as the access of media to court proceeding is concerned, it is guided by Sections 4 and 7 of the Contempt of Courts Act, 1971. Normally, the administration of justice is carried on in open court and with regard to such proceedings the rule under Section 4 states, “*one would not be guilty of contempt for publishing a fair and accurate report of such proceedings or any stage thereof*”.

In *Rajgopal v State of Tamil Nadu*, a two-judge bench of the Supreme Court held, “such matters as had become part of official records were not immune from press comment nor could their publication by the press be prevented. But this right of the media is subject to the exception[†], “a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media” (1994 6 SCC 632).

In a recent judgment in *Election Commission of India v MR Vijaya Bhaskar* (LL 2021 SC 244), the Supreme Court held, “*Freedom of speech and expression extends to reporting proceedings in judicial institutions as well. Courts are entrusted to perform crucial functions under the law. Their work has a direct impact, not only on the rights of citizens, but also the extent to which the citizens can exact accountability from the executive whose duty is to enforce the law. Citizens are entitled to ensure that courts remain true to their remit to be a check on arbitrary exercises of power. The ability of citizens to do so bears a direct correlation to the seamless availability of information about what happens in a court during the course of proceedings. Therein lays the importance of freedom of the media to comment on and write about proceedings*”.

ii) ***Access of Media to Legislative Proceedings***

Though actually parliamentary proceedings are televised in India, to allow or not to allow access to legislative proceedings is considered a part of parliamentary privilege.

[†]Section 7 of the Contempt of Courts Act, 1971 deals with the publication of proceedings held in chambers or in camera. It allows fair and accurate reporting of such proceedings, subject to following exceptions-(a) where the publication is contrary to the provisions of any enactment for the time being in force; (b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published; (c) where the court sits in chambers or *in camera* for reasons connected with public order or the security of the State, the publication of information relating to those proceedings; and (d) where the information relates to a secret process, discovery or invention, which is an issue in proceedings.

iii) *Access of Media to Other Public Institutions*

Generally, media is not allowed to enter prisons, orphanages and shelter homes within Government control, to report the conditions of inmates. But, on the basis of several court decisions it can be inferred, “a limited right to visit physically non-strategic government administered public institutions like prisons, protective homes and lunatic asylums by representatives of the press, welfare organisations like legal aid committees, and academics doing social sciences research in the area are allowed to visit these institutions. It is assumed that any such right will have to be compatible with the requirement of the functioning of such institutions and will have to be especially subject to regulations made by the concerned authority with regard to time, manner and number of visits permitted. It will also have to be compatible with the privacy claims of the inmates of such institutions. But it cannot be argued that such a right amounts to any encroachment on any executive prerogative or secrecy. After all, such institutions need to be administered under regular public gaze and scrutiny” (Rai, 2011).

In *Sunil Batra v Delhi Administration*, the horror of Tihar Jail was brought out by two inmates of the Jail itself. But the poor conditions of Bihar Jail, shelter homes and other mental asylums have been brought to public notice by resourceful investigative journalists, NGOs or other public spirited persons. We can refer to two other cases. In *State v Charulata Joshi* (1999 4 SCC 65), a two judge bench of the Supreme Court laid stress on the point that prayer for permission to visit a prison to interview prisoners should not be granted as a routine matter, that the court must know if the prison authorities had any objections, and that it should pass an order along with usual directives with a view to ensure that the visitors did not upset the administrative routine of the prison. Then there is another case, *M. Hasan v. Government of A.P.* (AIR 1998 AP 35), where Division bench of the Andhra Pradesh High Court asked the authorities to reconsider their earlier order refusing the petitioners permission to interview two condemned prisoners contemplating to make the interviews part of a documentary. In this case, the court took it as an established part of the right to speech and expression under Article 19 (1)(a) that people should be allowed to visit prisons and interview prisoners subject to such restrictions as could be imposed under Article 19(2).

In *Smt. Prabha Dutt v. Union of India* ((1982) 1 SCC 1 : AIR 1982 SC 6), a three-judge bench presided over by Chandrachud, C.J., allowed the application of a few press correspondents to interview the convicts Ranga and Billa, provided they were willing — in a manner causing least inconvenience to the prison authorities. To be specific, the press people

were to get themselves searched in accordance with prison rules, were expected to take not more than an hour, and all the press correspondents were to interview together.

In the subsequent decision of the Court in *Sheela Barsev. State of Maharashtra* ((1987) 4 SCC 373), “a limited right of access was expressly recognised”. The petitioner, a freelance journalist, wanted to interview women prisoners. The permission was granted, but objection was raged against tape recording of the interview and subsequently the permission granted was revoked. The Supreme Court emphasised the necessity for the exercise of an independent vigil on the working of prisons because “Prison administrators have the human tendency of attempting to cover up their lapses and so shun disclosure there of”. Rangnath Misra, J, emphasised on the importance of the right to know in a democracy. But he, cautioned that the right of access to information could not be absolute as it had to be subject to reasonable regulations. For example, interviews could not be forced on an unwilling prisoner and a person might be refused permission to interview a particular prisoner for special reasons. Moreover, information received from interviews had to be cross-checked with prison authorities so that the public might not be fed with false and misleading information.

In a significant verdict on 17th March, 2021, the Kerala High Court has “*directed the Kerala Police to publish in its official website the details of police officers who have been found guilty of corruption or human rights violations. It ruled that the Police cannot shield the names of officers who have been found guilty or dismissed from service on charges of corruption or human rights violations*”(WP(C). No.5274 OF 2020 (H)).

9.7 APPRAISAL

Freedom of speech and expression along with right to access information are mandatory for the responsive, transparent and accountable democratic government. If people are ignorant of what is happening around them and if they do not know the things which are necessary for their well-being and if information is withheld from reaching them, then they cannot take part properly in the affairs of the society and nation. Access to information is very important for good governance and for the well-being of the people living in any legal system. The Freedom of Information Act, 2002, was enacted by the Indian Parliament to bring transparency and accountability in administration, which was later on repealed and the Right to Information (RTI) Act, 2005 took its place. The RTI Act authorises Indian citizens to seek information from a Public Authority, to make government and its authorities accountable and responsible. Besides this formal source of information, there are other informal sources of information and the media is one of them. The preamble

to the Act “provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions”. However, media is the strongest tool for accessing information. It has to be very responsive and responsible to the interests of the citizenry. It is media, which can highlight cases of corruption and other wrong doings in the society and for securing justice to the people. It can intrude into Government activities and processes to facilitate good governance. It is the statutory (Section 2(j)) “right of every citizen to access information held by or under the control of public authorities”. But the information sought by an individual serves his/her own interest, whereas information sought by media serves the interests of a large segment of society. In recent years, media along with social media has been very active in eliciting information from different quarters in order to provide socio-economic and political justice to the people belonging to different segments of the society. Even authorities themselves, due to active and positive media reporting, are resorting to self-disclosure of information. The media has been successful in creating right regime for information seekers with the help of active judiciary and right to information law. However, the independence of the media can be fragile and easily compromised in the absence of right environment in terms of freedoms, capacities, and checks and balances. In the hands of media, the RTI Act is an additional tool to expose corruption and inefficiency of administration, which should be used with restraint.

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) “Freedom of speech and expression includes freedom of press”. Elucidate and refer to case laws.

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- 2) Analyse the role of media in facilitating the right to information.

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- 3) How enactment of the RTI Act, 2005 has helped media in accessing information from public institutions? Explain.

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9.8 CONCLUSION

The above discussion on the role of media both in accessing information and helping in the delivery of information for fulfilling the social needs, reiterates the fact that the media, whether print, electronic or mass media, is the most significant means of information in a populist government. The Media has universal approach and plays an important role in establishing an accountable and responsive government and equitable society. Sincere execution of development projects, environment protection and safeguarding of interests of deprived sections of society is possible only with the availability of information. The social dimension of right to information has been perceived by the judiciary by recognising that freedom of press is at the core of social and political discourse and a key role player in the process of social transformation. In present times, media being “the accessible, cost-effective and widespread source of information and platform for expression” can perform a vital role in building an informed society. But the fact is that media has not utilised much the Right to Information Act for eliciting information from the public authorities. It can play a productive role in the governance by utilising the core provisions of the Act. The media is an important link between the citizens and government. Freedom of media is a facet of the people’s right to information. It empowers the citizens by articulating the needs and aspirations of the people. As a community watchdog, the media should perform its role in furtherance of public interest.

9.9 GLOSSARY

Fundamental Human Right: It refers to a group of rights that have been recognised by a high degree of protection from encroachment. The Constitution of India generates– i) Right to equality, ii) Right to freedom, iii) Right against exploitation, iv) Right to freedom of religion, v) Cultural and educational rights, and vi) Right to constitutional remedies as the fundamental rights to Indian citizens.

Political discourse: Discourse is spoken or written communication between any two persons or groups, between media and political leaders, between political parties and movements, between state and union governments or between government and civil society. Here, political discourse refers to the formal exchange of reasoned views.

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9.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - There is a concrete link between media, right to information and good governance in ensuring accountability and transparency in administration. Through the right to information media can point out cases of corruption and other wrongs; and can facilitate people in accessing justice. Refer Section 9.2
- 2) Your answer should include the following points:
 - Press Council of India was the first to prepare a draft for the RTI legislation in India. Many of its provisions were given space while legislating the RTI Act, 2005. Refer to Section 9.3

Check Your Progress 2

- 1) Your answer should include the following points:
 - In the leading case of *SP Gupta v. Union of India* (1982), the Supreme Court recognised the right to information as a fundamental right implicit in Article 19(1) of the Indian Constitution, which includes freedom of press also. Refer Section 9.4 for other judgments.
- 2) Your answer should include the following points:
 - Media is very strong tool in facilitating the right to information for public good. It highlights malaise and corruption in the working of governance and keeps a check on the functioning of the public authorities. Refer to Section 9.5, for more details.
- 3) Your answer should include the following points:
 - Enactment of the RTI Act, 2005 has helped media in accessing information from public institutions specially those, which are under the Government control such as prisons, mental asylums, shelter houses etc. The media has also reported Parliament and court proceedings for the advantage of the people. Refer Section 9.6, for more details.

UNIT 10 **ROLE OF CIVIL SOCIETY ORGANISATIONS***

Structure

- 10.0 Objectives
- 10.1 Introduction
- 10.2 Meaning, Importance and Role of Civil Society
- 10.3 History of Civil Society Movements in India
- 10.4 Role of Civil Society Organisations in the Evolution of RTI
- 10.5 Government Initiatives in Enacting the RTI Act, 2005
- 10.6 Appraisal
- 10.7 Conclusion
- 10.8 Glossary
- 10.9 References
- 10.10 Answers to Check Your Progress Exercises

10.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the genesis of Right to Information movement in India;
- Explain the role and importance of civil society in law-making;
- Illustrate the role of civil society organisations in the evolution of right to information;
- Examine the initiatives in enactment of the Right to Information Act, 2005; and
- Describe the value of democratic principles in the governance.

10.1 INTRODUCTION

Right to information is an inalienable right in a democracy. Good governance and right to know are complementary to each other. The RTI enhances the quality of governance by ensuring transparency and accountability in administration, which is the sine qua non of participatory democracy. The

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democracy is regarded as the people-oriented system of governance. It has to be built on the foundation of informed, enlightened and empowered citizens. Democracy becomes vibrant, if the people assert their rights and privileges on the basis of their awareness about constitutional provisions, human rights and developmental opportunities. Information is a resource and instrument, which facilitates active participation of people in the process of development.

The world has witnessed a great movement for right to information since it contains the statutory provisions for the effective implementation of the informative aspects of democratic form of governance. In 1946, the United Nations General Assembly recognised that “Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated”. Soon after, the right to information was given international legal status, when it was enshrined in Article 19 of the International Covenant on Civil and Political Rights. The spirit of Universal Declaration of Human Rights, 1948, Preamble to the Constitution of India and Article 19(1) (a) emphasises the freedom of speech and expression. The Constitution provides the freedom of expression as the government must be transparent, accountable and responsible in a civil society. The right to information is an intrinsic part of fundamental right to free speech and expression. The RTI Act empowered Indian citizens to obtain information from public authorities. The Government of India enacted the Right to Information Act, 2005. The present RTI Act in India is the product of longstanding collective struggle against arbitrariness and corrupt government officials. Democracy requires an informed citizenry and transparency of information, both of which are vital to its functioning. These attributes of democracy contain corruption and hold the governments and their instrumentalities accountable to the governed. The *Right to Information Act, 2005*, received Presidential assent on 15th June 2005 and came into force on 12th October 2005. The RTI enactment marked a new and higher level of evolution of India's parliamentary democracy. The enactment of the legislation was the result of a variety of factors, both international and domestic. Though the struggle was long and arduous yet, the people's movement succeeded in getting a law on RTI enacted. The enactment of the Right to Information Act has been widely recorded as a victory of Indian democratic process.

The present Unit traces the circumstances, struggle and efforts, which were involved at the grassroots level to make RTI a reality in India. This Unit also illustrates the process that went behind the enactment of the present the Right to Information Act, 2005. It contemplates on the active role played by the people's groups in getting the RTI formally recognised in India.

10.2 MEANING, IMPORTANCE AND ROLE OF CIVIL SOCIETY

Civil society is the society driven by people themselves. It has its origin in ancient times although the understanding and meaning have changed over a period of time. The Roman word *societas civilis* was the root word of it having a synonymity with a good society. It was Hegel, the German philosopher who had coined the term civil society and the meaning of it that we understand today. In a civil society, people voluntarily come together to achieve the desired objective of welfare of the society or to raise the problems of people before the state. Basically, the voids of the state can be rightly filled by the civil society. The term civil society was originally used to describe popular movements in the society. With the passage of time it has expanded to embrace diversity of spaces and non-state actors like; non-governmental organisations self help groups, business associations, social movements and groups of special interests. Antonio Gramsci says, the word “civil society” has emerged in the 18th century and become a buzz word in 20th century with an altogether new conceptualisation – a self-regulated society, free from political interference and assuming a separate and viable entity. The notion of civil society today is commonly identified with a non-statist set of institutions that stand for serving the interest of the people at large (Biju, 2009). The Civil societies are defined as the sum of people who come together and organise themselves around common interests.

The Civil society has an autonomous space, which is independent of the state and government from where citizens keep watch on the state or do whatever they want to do independently of the state. It is recognised as a non-party political sphere, where individuals come together and form associations voluntarily to promote public good. The Civil society refers to self-organised associations and social movements that may (or may not) attempt to influence power-holders that comprise parties and other contestants for power in political institutions. It makes democratic government more effective. Without changes in the state, civil society cannot itself bring about democracy. There must be some form of state withdrawals to provide civil society organisations with protected space to grow and freedom to negotiate their differences (Elliott, 2003).

Civil society is very important term today and any discussion on democracy and human rights is incomplete without taking into consideration the concept of civil society. A democracy needs a strong civil society to ensure that all organs of the government function within the parameters of the constitution. It is necessary for all round development of the society. The Civil Society Organisations (CSOs) can influence the government policies and can build a sense of community based on trust and mutual respect. So the civil society

plays an important role in shaping and reshaping the society. It also acts as a link between the people and government. “In actual practice, where government fails or political parties miss the opportunity, the civil society should fill the space, come up to the expectations of the people, especially the marginalised and deprived segments of the society” (Kumar, 2011).

Civil Society Organisations are non-state, not for profit, voluntary entities formed by people in the social sphere that are separate from the State and market. The CSOs represent a wide range of interests and ties. They can include community-based peoples’ organisations as well as Non-Governmental Organisations.

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 importance of right to information in good governance.

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- 2) Explain the term civil society and its role in bringing right to information regime in India.

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10.3 HISTORY OF CIVIL SOCIETY MOVEMENTS IN INDIA

The most powerful civil society movements in Indian history, which were led by citizens were Swadeshi movements of 1905. Probably one of the most significant movements in Indian history, Satyagraha brought thousands of people together in a peaceful way. The non-violence movement started by Mahatma Gandhi to send the Britishers back to their country and leave India free of foreign rule eventually got success. Silent Valley Protest (an evergreen tropical forest in the Palakkad district of Kerala), in 1973 brought

many activists and people together. The protest was focused on stopping the valley from being flooded by a hydroelectric project. Chipko Movement, saw people protesting against deforestation by hugging trees to stop them from being cut. Protests started in the early 1970s when a group of women opposed the cutting down of trees and brought thousands of people across India in support of their green movement for saving the environment.

In Jungle Bachao Andolan of 1980s, when the government decided to replace the natural sal forest with highly valued teak, the tribals of Bihar came out in a large number to protest against this decision. Having started in Bihar, the movement spread to other states such as Odisha and Jharkhand. Very famous Narmada Bachao Andolan of 1985 against a large number of dams being constructed near Narmada River brought a large number of *adivasis*, farmers, environmentalists, and human rights activists together. Many prominent celebrities and people went on hunger strikes to show their support for the cause. In 1990s emergence of various people's movements led by the Mazdoor Kisan Shakti Sangathan (MKSS), resulted in a concerted effort towards the enactment of the Right to Information Act, 2005.

The Anti-Corruption Movement for Jan Lokpal Bill of 2011, led by social activist Anna Hazare brought together a huge number of people, making it a one of its kind event in decades. Nirbhaya Movement of 2012 created stir in India, when tens of thousands of people signed a petition protesting against the incident of gang rape in the Capital city of Delhi. This people's movement forced the government to announce several steps to ensure the safety of women and led to overhauling of the Criminal Law Reforms in 2013.[†]

10.4 ROLE OF CIVIL SOCIETY ORGANISATIONS IN THE EVOLUTION OF RTI

The institution of civil society is not alien to India. We have a long history of civil society organisations in India. The roots of civil society in India date back to the ancient and medieval periods. "Caste Panchayats", village "Panchayats", or "trade associations" all illustrate forms of local institutions. These institutions remained untouched by the changes of the political dynamics and were autonomous from state control.[‡] After independence of India, people were dejected as the government could not meet people's needs and aspirations. Irresponsiveness of the state towards citizen's malaise resulted in the mushrooming of non-state actors in the country. With growing disenchantment of the common man with the government and its incapacity

[†] <https://www.thebetterindia.com/18248/most-powerful-social-citizens-movements-in-india/> Accessed on 16 May 2021

[‡] Ibid., p. 56.

to respond to diverse interests and expectations of the people alienated poor and the marginalised from the elite dominated institutions of the government. Consequently, civil society came to occupy an important place in the space created between the aspirations of people and the institutions of the government (Mathur, 2005).

The Civil societies in India have been in the forefront in mobilising public opinion and suggesting changes in public policies through various modes. The success of public policy is largely dependent on the effective response of civil society. Its role is crucial and catalytic insofar as it can make the people aware about their constitutional and other statutory rights. Many policy initiatives in India are based on active and participatory role of civil society actions, local representatives, organisations, government departments and private investors. The RTI Act provides a backbone for such initiatives on the part of civil societies. The Civil society groups have to function as information houses for the people, helping them to access and demystify government data. They need to analyse the information access to highlight its significance (Power to the people, 2005).

The empowerment of civil society is an essential requirement for improving governance as well as strengthening democracy in India. After the enactment of the RTI Act, the country has made great strides in empowering its civil society and the Act has become one of the important pillars of good governance and democracy. The term “civil society” includes all those citizens who are able to use the RTI Act, RTI activists and NGOs who come forward to make citizens aware about their rights.

In India, the concept of access to information is older than the secrecy regime. India has been traditionally an open society. But the British Rule established here the culture of secrecy leading to apathetic attitude of staff in offices to people’s demand for information. The Official Secret Act of 1923 expressly forbids the dissemination of most information and most of the public documents are kept out of reach of the citizens. The colonial legacy of bureaucratic and government control over official information continued even after India became independent.

Interestingly, though India adopted Parliamentary form of government as per Constitutional mandate, which is indirectly represented by its people. But instead of the birth of representative democracy, it was its subsequent failures that gave birth to civil society organisations to strive for the transparency regime. There was an urge amongst the people to move towards participatory democracy so that they may have a say in the governance of the country.

Various stakeholders were a part of the struggle for the right to access information that was inherently the public’s but was kept away from them. In the 1990s the rural poor’s basic economic rights and access to government

schemes were a burning question and concern. Several movements with their impactful leaders like Anna Hazare, Arvind Kejriwal, Nikhil Dey, Anchi, Shanker Singh, Shailesh Gandhi, Aruna Roy and others strived to achieve the right to information for them. The relevance and importance of transparency came into the spotlight on a national platform when small, regional movements for right to information at the state levels brought to the forefront, how landless workers in rural areas were being cheated and not paid their full wages. The paymasters were government officials who claimed that the workers had worked for less days than they actually had. They could not challenge the claim as access to the attendance register in which they had affixed their thumbprints every day they worked was denied to them, on the pretext of being “confidential government records”.

Another group of information seekers comprised of activists working for the benefit of the society in conflict prone areas of India. They joined hands to fight for transparency in the system of governance, and for the human rights of various deprived individuals and groups. Their main argument was that their efforts to prevent felonious detentions, human rights abuses etc. were forestalled because they were denied access to the relevant information.

Some were supporters of environmentalists, concerned about the rapid destruction and degradation of the environment. They propagated their purview of the importance of access to the details of information regarding any developmental measures being taken, and its environmental impact. In 1985 many applications were filed in the Supreme Court by environmental NGOs following the Bhopal gas tragedy, asking for access to information relating to environmental hazards. Significant others in the fight for transparency were various professionals, especially journalists, lawyers, academicians, and some retired and serving civil servants. (Stuti, <http://www.legalserviceindia.com/legal/article-323-evolution-and-development-of-the-right-to-information-act-in-india.html>).

Move towards fundamental Right to Information

In India, though the demand for greater transparency in government began in the initial decades after independence, these demands were not very consistent and were concerned with specific issues and events. However, it was only in 1975 that the clear enunciation of the fundamental right to information was seen in the State of UP v. Raj Narain & Ors ((1975) 4 SCC 428), wherein the Supreme Court of India ruled, *“In a government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings”*.

The idea of information as a right received further incentive in *S.P. Gupta v. Union of India* (AIR 1982 SC 149) when the SC held the right to information to be a fundamental right and made the following observation:

“The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosure of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest bearing in mind all the time that disclosure also serves an important aspect of public interest”.

Further in *People’s Union for Civil Liberties (PUCL) & Another v. Union of India* ((2004) 2 SCC 476), while dealing with the question of whether right to freedom of speech and expression under Article 19(1)(a) includes voters’ right to know relevant particulars of their candidates such as assets, qualification, and involvement in offence for whom they are going to vote? Answering this question, the Supreme Court held, *“The common people of this country should have the basic elementary right to know the full particulars of a candidate who is to represent them in Parliament. The right to get information in a democracy is recognised all throughout, and it is a right flowing from the concept of democracy”.*

In spite of repeated recognition by the Supreme Court of India that the RTI is a natural right flowing from the concept of democracy, there was very little effort by the government to institutionalise this right through an appropriate legislation. RTI began to receive attention only when people’s groups began to work in rural India. Through grassroots mobilisation, building coalitions and strong advocacy, it exerted pressure on government to bring about RTI legislation.

i) **Role of Mazdoor Kisan Shakti Sangathan**

In 1990s the emergence of various people’s movements spearheaded by the Mazdoor Kisan Shakti Sangathan (MKSS), headed by four human rights activists-Nikhil Dey, Anchi, Shanker Singh and Aruna Roy, led to a concerted effort towards institutionalisation of RTI.

The MKSS is an Association for the Empowerment of Labourers and Farmers. It is a people’s organisation best known for its demand for the Right to Information Act, which grew out of the demand for minimum wages for workers (Mohan, 2009). The origins of the Indian RTI movement lie in Devdungri, a tiny place located in central Rajasthan, which soon became a meeting point for the people who were

concerned about social discrepancies and did not know how to confront the local elite and the officials.

From the early 1990s, the MKSS had started a grassroots movement in the rural areas of the state of Rajasthan, demanding access to government information on behalf of the wage workers and small farmers who were often deprived of their rightful wages in state development projects or their just benefits under government drought relief as well as equitable distribution of rationed items under the Public Distribution System (PDS). The MKSS transformed the RTI movement “as demand for free access to information became an important aspect in the context of minimum wages” (Naib, 2012). What was till then mainly a movement pushed by a few activists and academicians metamorphosed into a mass movement that quickly spread not only across the state of Rajasthan but in most of the country. It was mainly as a result of this rapid spread of the demand for transparency that needs to formulate a national RTI legislation began to be felt.

During their long struggle for RTI, which was being denied under the excuse of the Official Secrets Act, 1923, the MKSS identified the method of *Public Hearings* or *Jan Sunwai* as a suitable measure to voice their demand for RTI. In Jan Sunwais or Public Hearings detailed documents were derived from officials, expenditure records were read aloud to the people of the villages who gathered. These Jan Sunwais were organised independent of the government but government officials were also invited to attend. In the form of a hearing, people were invited to give their testimonies, which often revealed differences between official records and people’s experiences. The first Jan Sunwai by MKSS was held on 4th December 1994, in Kot Kirana in Pali District of Rajasthan demanding transparency in all development funds, a large portion of which was being misused by corrupt bureaucrats and government agencies. The MKSS’ campaign demanded transparency of official records, a social audit of government spending and a redressal machinery for people who had not been given their due. The campaign caught the imagination of a large cross-section of people, including activists, civil servants and lawyers (Reddy, 2006).

Through several public hearings or Jan Sunwais in the districts of Rajsamand, Pali, Ajmer and Bhairon, the MKSS exposed systemic corruption across Rajasthan, but no result came out. The then Chief Minister of Rajasthan too did not fulfil his promise of right to information. Hence, on 5th April, 1996, the MKSS announced a strike (Dharna) in the city of Beawar in Ajmer, Rajasthan (Roy, 1996). The MKSS’ forty days long *dharna* (sit in protest) became historic to demand the Right to Information. Protestors came from across rural Rajasthan to

the city of Beawar. The novelty of this protest was the demand for information by the poor instead of expected basic needs like food and shelter. During the protest, a memorandum was given to the Sub-divisional Officer at Beawar demanding local expenditure records.

The protest began with support from over one hundred and fifty villages. It was supported by donations of grain from these villages and individuals in Beawar. Almost forty-six thousand rupees were donated to keep the protest going. Nearby vegetable vendors, donated to the protestors and provided them food and water. Doctors offered their services. Local people joined in and walked with the rural protestors. The people of Beawar embraced the protest and began to make it their own. The protest was marked by cultural expression including song, theatre and puppetry. Local cultural groups joined in. These included a group of devotional singers (Bhajan Mandali) who would sing parodies of devotional songs in support of the demands of the protestors. Bagpipers and local poets also joined in. Local cadres of trade unions also lent their support (Mishra, 2003).

As the protest gained momentum, people began to visit Beawar from across the country to see the extraordinary happenings that were taking place in this small city in Rajasthan. Journalists, lawmakers, and artists, amongst many others came to the city of Beawar. Senior journalists, who visited, include Nikhil Chakravartty, Kuldip Nayar, and Prabhash Joshi. Prabhash Joshi wrote a historic editorial in the *Jansatta* newspaper entitled “*Hum Jaanenge, Hum Jiyenge*” (We will know, we will live). This title became a slogan of the RTI movement in India and was modified to assert the sovereign rights in a democracy with the slogan “the right to know is the right to live” (Roy, et.al., 2010). After forty days dharna, which ended on 16th May 1996, a committee was appointed by the Rajasthan Government under Mr Arun Kumar to look into the benefits and risks related to the free access to documents of the local administration. The Committee submitted its report on 30 August 1996, but its report was not made public. Hence, more Jan Sunwais and dharnas followed (Naib, 2012).

The Beawar dharna of 1996 led by the MKSS, where the notion of campaign was born, manifested three basic principles for the need of right to know. The first was the right to transparency of accounts and records along with accountability of the government to its people. The slogan “Our money, our accounts; Hamara Paisa Hamara Hisab” summarised the need for RTI. Second was recognition that the legal entitlement for the right should be drafted, framed and owned by the people after public debate. The third and most important was the democratic accountability of an elected political government to its people

(Roy, 2019). The movement, which began from Beawar got solidarity and support from people from all over the country.

The Beawar Dharna put the RTI campaign on the national map. It also laid the foundation for the nationwide demand for a strong RTI legislation. Need for RTI legislation was the focus of discussion in a meeting held in October 1995, at the Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie. This meeting, attended by activists, professionals and administrators alike, took forward the agenda of setting up an appropriate national body.

ii) **Role of National Campaign for People's Right to Information**

In August, 1996, a meeting was convened, appropriately at the Gandhi Peace Foundation, in New Delhi where the National Campaign for People's Right to Information (NCPRI) was born. Its founding members included social activists, senior journalists, lawyers, professionals, retired distinguished civil servants and academicians, and one of its primary objectives was to campaign for a national law facilitating the exercise of the fundamental right to information. Along with MKSS, other organisations, which took active interest in this campaign were Lok Satta in Andhra Pradesh, Parivartan and Press Council of India in Delhi. The NCPRI also vigorously advocated for the removal of the Official Secrets Act, 1923.

The NCPRI adopted mixed tactics to ensure success. While it developed allies within the state, it also derived its power from sustained public pressure from a vigilant and mobilised citizenry. This involved public hearings or Jan Sunwais to compare official records with actual services provided by village committees or panchayats, as well as state and national level meetings and conventions of activists. The NCPRI also organised journeys or yatras involving a caravan of activists, ordinary villagers and students travelling from place to place with the RTI message, which they communicated through songs and sketches. The movement also printed newsletters in Hindi and English, and received media attention. Although the NCPRI leadership sought to distance itself from the international neo-liberal agenda on transparency and accountability, it also indirectly benefited from it. The prevailing ideology of economic liberalisation, with its critical view of state intervention, prompted greater openness among some government officials about the failure of service delivery and governance, and the need for greater accountability.

In 1997 the campaign for RTI quickened at both the national and state level. The NCPRI became a broad-based platform for struggle to access information and it forced the Rajasthan Government to pass a law on the Right to Information. The Government of Rajasthan realised the

importance of right to information and passed a Right to Information law on May 1, 2000, which became effective from June 2000. The Act in Rajasthan gave the citizens a legal entitlement to seek and receive information on any sector of governance.

The NCPRI took up the task of formulating an objective for a national law on the right to information and for this purpose it drafted an RTI Act. Once drafted, this draft bill was sent to the Press Council of India (PCI), which was headed by a sympathetic Chairperson, Justice S.B. Sawant, who was a retired judge of the Supreme Court of India. The Press Council examined the draft bill and suggested a few additions and modifications. The revised bill was then presented at a large conference, organised in Delhi, which had among its participants, representatives of most of the important political parties of India.

iii) **Anna Hazare's Struggle against Corruption**

Anna Hazare, a social activist, who has fought and struggled for many civil rights in the favour of citizens of India also took stride against corruption. He began his struggle against corruption on 11th March, 1995 in the government offices. On 6th April, 1995, he chose Azad Maidan, Mumbai for launching his agitation for the right to information legislation in India. He gave a memorandum to the government on 12th January, 1998 containing demand for right to information for doing away with corruption from Indian society. He criticised the Congress-NCP government in Maharashtra for their laxity in formulating the Right to Information Act. Again in 2001, he started a silent agitation along with his supporters to pursue his demand for right to information. He wrote a number of letters to various authorities in Central and State governments advocating the cause of right to information. Finally, he went on a fast on 9th August, 2003 at the Azad Maidan in Mumbai, which led to mass movement for right to information. Kneeling under pressure the Maharashtra Government enacted the Right to Information Act, 2002 to ensure good governance.

The movement of Anna Hazare soon gathered strength for a Central legislation on RTI with other social activists like Aruna Roy, Arvind Kejriwal, Shailesh Gandhi, Prakash Kardaley demanding a law for transparency and accountability in India. Historic all India Anti-Corruption Movement for Jan Lokpal Bill of 2011, led by Anna Hazare also strengthened the fight against corruption and demand for all India legislation guaranteeing fundamental right to information.

iv) **Commonwealth Human Rights Initiative Campaign for RTI**

In 1987, several Commonwealth professional associations founded Commonwealth Human Rights Initiative (CHRI). It is an independent,

non-partisan, international non-governmental organisation with a mandate to ensure the practical realisation of human rights in the countries of the Commonwealth. The CHRI opines that the right to information provides a basic link between various human rights and hence advocates for the promotion of its perspective in all commonwealth countries. In mid-1997, when important developments were taking place both at the grassroots level and on the legislative front for RTI, CHRI also started a country-wide debate on the issue. It came out with a series of publications targeting masses at different levels to help them by simplifying the issues.

“Civil society groups brought together by CHRI initiated a campaign to educate people about the operation of the right and to activate the government orders by filing applications for information” (Mander & Joshi, 1999). The CHRI also conducted a number of workshops and other small meetings, mostly at the regional level but also nationally and internationally. The participants were from different background and included NGO representatives, academics, lawyers and jurists, youth groups and students, media workers, bureaucrats, and people from other walks of life. The workshops were designed to have feedback on the information needs of people, problems of access to information and what people expected from the prospective law. Certain practical issues were also discussed in the workshops.

The CHRI had also been involved both at Central and state level initiatives for enacting right to information legislation. It played an active role, especially in the States of Madhya Pradesh, Delhi, Karnataka and Rajasthan in their efforts for institutionalising the RTI. The CHRI campaign brought together all stakeholders working in furtherance of the RTI. It also brought together different actors working at different levels, both within the civil society as well as with the government. The CHRI played a prominent role in the enactment of RTI Act by suggesting some vital changes in the RTI Bill, which was placed by the NCPRI before the Parliament.

v) **Campaign of Consumers Education and Research Centre (CERC) and Other Small Groups**

The consumer rights protection movements in India have also been concerned with the lack of transparency with regards to matters that affected consumer rights. Consumers were being duped by manufacturers and sellers due to defects in goods and deficiency in services, because they had no right to reasonable examination of goods they purchased or the information about the services due to standard forms of contracts, where terms and conditions are pre-determined. Consumer Guidance Society of India, Consumers Education and

Research Centre (CERC), Grahak, Panchayat and others were involved in consumer rights movement. One of their demands was for right to information in consumer affairs. They had also formulated an Access to Information Bill 1996. In early 1980s, the CERC in Ahmadabad conducted research in freedom of information laws in other parts of the world, especially of the USA and Canada. On the basis of its research, the CERC drafted legislation, which was introduced in Parliament as a private member's Bill. The CERC also held a series of workshops on the issue of consumer welfare and consumer rights to spread consumer education in the masses.

Other smaller groups and movements, which were struggling for other various causes had also invoked the right to information in their advocacy. Panchayat Bachao Abhiyaan, an informal movement in Bihar and Jharkhand, wanted local elections to be held, making the connection between the importance of political representation and citizens' entitlements. They were demanding right to information legislation as part of their voter education programmes.

Some Non-Governmental Organisations have reinforced the demand for right to information by holding "transparency fairs" in their organisations, throwing open their own records. This was a unique process as the first reaction of the governments to demands for transparency is often to accuse NGOs, especially those receiving foreign funds, for lack of integrity and openness. In Goa, the Right to Information issues were raised by journalists, later on backed by civil society groups also. The media also supported the movement for the right to information by giving frequent coverage to RTI movement. During the CHRI campaign on the issue of RTI, both on State and local level media, including radio and television, had covered the issue frequently relating it to local concerns.

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) Analyse the role of MKSS, NCPRI and other civil society organisations in developing right to information in India

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- 2) What do you understand by public hearing or Jan Sunwai? Discuss its role in the movement for right to information.

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10.5 GOVERNMENT INITIATIVES IN ENACTING THE RIGHT TO INFORMATION ACT, 2005

The first major draft legislation on RTI, was prepared by the Press Council of India. The Press Council draft affirmed in its preamble that the right to information is already protected under the Constitution as an aspect of the fundamental right to free speech and expression, in line with a number of superior court rulings. The draft affirmed the right of every citizen to information from any public body. Significantly, the term public body included not only the state, as defined in the Constitution, but also all privately-owned undertakings, non-statutory authorities, companies and other non-state bodies whose activities affect the public interest. Thus, both the commercial sector and non-governmental organisations were included in the ambit of this draft. The draft did provide for a limited number of restrictions on the right to information, in line with those allowed in relation to other fundamental rights. These included where disclosure would prejudicially affect the sovereignty and integrity of India, the security of the state and friendly relations with foreign states, public order, investigation of an offence, or where disclosure would lead to incitement to an offence. Bonafide grounds of individual privacy and trade and commercial interests were also included as exceptions. The draft also provided for personal fines for failing to provide information and for appeals to the local civil judiciary against a failure or refusal to supply the requested information (Naib, 2012).

The NCPRI then sent this much debated and widely supported bill to the Government of India, with a request that the Government consider urgently converting it into a law. In response, the Government of India set up a Working Group under consumer activist late Sri H.D. Shourie. The Shourie committee was given the responsibility of examining the draft of the RTI Bill and making recommendations that would help the Government to institutionalise transparency. The committee worked fast and presented its report to the Government within a few months of being set up and came up with its own draft of the RTI Act (Jain, 2006).

This draft, after extensive discussions, was sent to the Government of India. This was a very diluted version of the Bill first drafted by the NCPRI and others in 1996. Therefore, inevitably, the draft Bill, based on the recommendations of the Shourie committee, was referred to the Parliamentary Standing Committee, which gave its recommendations in 2002. Thereafter the Freedom of Information Bill, 2000 was introduced in Parliament in 2002. This Bill was deficient in many respects, including its limited scope (specifically, the exclusion of private bodies from coverage), the breadth of its exemptions, the failure to include a public interest override of exemptions, the absence of an effective independent appeals mechanism and the failure to include public education and monitoring provisions (CHRI, 2004). These shortcomings were to be remedied as a priority, if the Act was to effectively serve its purpose.

In spite of the fact that the provisions of the Bill were weak in many respects, it was passed in December, 2002. The Bill received President's assent on January 2003 as the enactment of the Freedom of Information (FOI) Act 2002. The Act had the provision that it would come into effect from the date notified. Interestingly, despite being passed by both houses of Parliament and having received Presidential assent, this Act was never notified and therefore never became effective.

The second convention of NCPRI was held in Delhi in 2004, and again was attended by over a thousand delegates from all over the country. Over thirty workshops were organised as a part of the convention to discuss the use of RTI in different areas of work and governance. The NCPRI also organised a public hearing in Bhopal, in 2002, around the proposed Maheshwar Dam on the Narmada River. Three to four hundred people, mainly from among those who were affected by the project, attended this public hearing. Representatives of S. Kumars, the company building the project, also participated.

New political opportunities facilitated the passage of the RTI Act, 2005. National elections were announced in 2004, and the "strengthening" of the RTI Act included in the manifesto of the Congress Party. In May 2004, the Congress Party came to power as a part of a United Progressive Alliance (UPA) coalition government, and the UPA formulated a "Minimum Common Programme", which again stressed for the RTI. In June 2004 the Government constituted a National Advisory Council (NAC) under Mrs. Sonia Gandhi to see the implementation of the common minimum programme. The Council suggested important changes to be incorporated in the FOI Act. However, the UPA Government decided to repeal the FOI Act, 2002 and enact a new legislation. In August 2004, the NCPRI forwarded to the National Advisory Council a set of suggested amendments to the Freedom of 2002. These amendments, designed to strengthen and make the 2002, Act more effective,

were based on extensive discussions with civil society groups working on transparency and other related issues and were in response to the undertaking given by the UPA Government, in their Common Minimum Programme, that the Right to Information Act will be made more progressive, participatory and meaningful. The Supreme Court had also in a public interest litigation case (CENTRE FOR P.I.L. & ORS. vs. UOI & ANR., W.P(C) 637/1998), pursued by Prashant Bhushan on behalf of the NCPRI, set a deadline of September 15, 2004 for the Central Government to issue notification on the Right to Information Act.

The NAC endorsed most of the suggested amendments and recommended them to the Prime Minister of India for further action. The RTI Bill was tabled in the winter session of the Parliament in December 2004. However, this bill, as introduced in Parliament, had many weaknesses. Unlike the NCPRI suggestion, it did not apply to the whole country but only to the Union Government. The consequent outrage from civil society groups, including the NCPRI, forced the Government to review the changes. The Bill was immediately referred to the Standing Committee and to a Group of Ministers for examining it and making recommendations thereon. The final report of the Standing Committee was tabled in the Lok Sabha in March, 2005. Ultimately, the Bill was passed after over a hundred amendments introduced by the Government to accommodate the recommendations of the Parliamentary Committee and the Group of Ministers. Most importantly the jurisdiction of the Bill was extended to cover the whole of India. The Right to Information Bill, 2005 was passed by the Lok Sabha on 11th May, 2005 and by Rajya Sabha on 12th May 2005 and it received the assent of the President on 15th June, 2005. It came on the Statute Book as THE RIGHT TO INFORMATION ACT, 2005 (22 of 2005). The full Right to Information Act, 2005 came into force within 120 days of its enactment, that is, on 12th October, 2005. Since then, the RTI Act has been used to fight corruption at various levels of administration and to bring good governance in India.

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) Discuss the circumstances, which played crucial role in enactment of the Right To Information Act, 2005.

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10.6 APPRAISAL

The making of the Right to Information Act of India in 2005 has been widely recorded as a democratic process. Present Unit analyses how the interests of different stakeholders converged democratically into the formation of a law. The Civil Society Movement for RTI enactment is an example of consultative and collaborative law-making processes involving multi-stakeholders. The real movement for right to information originated from the grassroots level. Right to information was demanded in the similar way, as other rights of work or right to minimum wages were demanded by the common people for the sustenance of their life. The movement started by MKSS was further strengthened by other people's movement such as NCPRI, Anna Hazare's Movement against corruption and Consumer organisations' struggle for right to information. The Movement was also supported by the Press Council of India and Commonwealth Human Rights Initiative, to lead it towards its desired result. The Civil Society Organisations fight for the RTI Act is also reflective of the fact that when consultations are held with particular focus on those who are likely to be most affected by the proposed law and if their feedback is incorporated, it becomes vital in the direction of policy and law-making.

10.7 CONCLUSION

India's transparency law Right to Information, enacted on 12th October 2005, is one of the most powerful legislations to have come into force. Its recognition involves a long history, but it was only in the 1990s that the struggle demanding legislation really took off. In Rajasthan, some of the labourers working on daily wage basis were deprived of their minimum wages. The Mazdoor Kisan Shakti Sangathan, a non-political organisation came forward to help them. Through MKSS a number of *Jan-Sunwais* (public hearings) were held for creating awareness at various places in Rajasthan. The movement was joined by social activists from other parts of the country too, demanding a law for transparency and accountability. Before the enactment of Central legislation in 2005 many states of India have enacted their own RTI Acts.

Though the movement began at the grassroots level, its impact was felt in all parts of the country. The NCPRI joined as a support group to do advocacy on RTI at a national level. Even the CHRI & CERC too joined the fray for RTI legislation in India. The NCPRI prepared a draft in 1996 and sent it to the Government with the support of Press Council of India. The Government referred the draft Bill to Mr. HD Shourie Committee. Since RTI activists were not satisfied with the Shourie Committee report, it was referred to a

Parliamentary Standing Committee. Ultimately Freedom of Information Act, 2002 was passed, but could never be notified.

When UPA Government came to power in 2004, it brought a Common Minimum Programme including a promise to make the Right to Information Act. This rare opportunity was utilised by the NCPRI to get a stronger law that gave recognition to people's access to information as a right. It can be concluded that the consultative approach adopted by civil society organisations with real stakeholders lastly culminated into successful enactment of the RTI Act, 2005.

10.8 GLOSSARY

Jan Sunwai / Public Hearing: It refers to a Hindi phrase, which means "Public Hearing". It is like an informal court composed of local people as its judges wanting accountability; there is no system of penalising involved. Jan Sunwai is a democratic way to familiarise the local people with the government policies and the activities of the public authorities so that they can understand what the government is doing towards the development of their communities.

NAC: The National Advisory Council (NAC) of India was a body set up by the first United Progressive Alliance (UPA) government to advise the Prime Minister of India. NAC, a 14 member committee comprised of ex-bureaucrats, members of civil society, academicians and lawyers. The Prime Minister of India, in consultation with cabinet ministers, appointed the members. Their role was to help in drafting legislation. The NAC has been instrumental in drafting the Right to Information Act and the National Rural Employment Guarantee Act.

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10.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Right to information is sine qua non of good governance. It enhances the quality of governance by ensuring transparency and accountability

in a democratic set up. The true democracy is to be built on the foundation of informed, enlightened and empowered citizens. Refer Section 10.1

2) Your answer should include the following points:

- Civil society is the society driven by people themselves and includes non-state actors like non-governmental organisations (NGOs), self-help groups, business associations, social movements and groups of special interests. Refer Section 10.2 and 10.3

Check Your Progress 2

1) Your answer should include the following points:

- With the slogan like “the right to know is the right to live” and “Our money, our accounts” MKSS led forty days long dharna (sit in protest) that became historic to demand the Right to Information. NCPRI, CHRI, CERC and other social activists working in different field also contributed to the success of right to information movement. Refer Section 10.4

2) Your answer should include the following points:

- In the form of a court hearing, people were invited in Jan Sunwais to give their testimonies, which often revealed differences between official records and people’s experiences. In Jan Sunwais or Public Hearings detailed documents were derived from officials, expenditure records were read aloud to the people of the villages who gathered. The MKSS identified it as an important tool to voice their demand for the RTI Act. Refer Section 10.4

Check Your Progress 3

1) Your answer should include the following points:

- With the coming up of UPA government at the centre, the movement for the RTI got a new lease of life. The Freedom of Information Act, 2002, which could never be notified, was discarded. With the concerted efforts of the NCPRI and its Allies, a draft of the RTI Act was reframed and submitted to the National Advisory Committee for consideration. Keeping in view demands of civil society organisations and recommendations of Standing Committee of Parliament, the RTI Act came into force on 12th October, 2005. Refer Section 10.5

