1

INTERNATIONAL FRAMEWORK

A) Theories of Right To Information (RTI)
B) History of Right To Information (RTI) in the World
C) International Laws on Transparency.

1A) Theories of Right to Information (RTI)

1A.0 OBJECTIVES

- To understand the **Meaning of Information**
- To analyse various **Necessity and Importance of Right to Information**
- To understand the **Right to Information and Human Rights**

1A.2 INTRODUCTION:

The Lord Austin has rightly said that power corrupts and absolute power tends to corrupt absolutely. There is an inherent danger that the vast powers of the executive may be used for private gains or for corrupt ends, or arbitrarily and capriciously. In this context, it is essential for the people to know what the government is doing. The first essential to ensure accountability of government to the people is the citizens' right to know or to be informed how and in what manner their government has been functioning. Unless they have access to government information and have the true facts, they will not be in a position to cast their votes, rationally and intelligently. A democratic government is sensitive to the public opinion, it is for the public to form a rational and correct opinion. They should have the facts, nothing but the true facts. Any government, democratic or otherwise, may abuse its powers if it is permitted to function in secrecy. Secrecy, being an instrument of conspiracy, ought not to be a system of regular government. Corruption thrives in secret places. Secrecy is an evil perse.

It is quite often in the interests of the government in power that people are allowed to have access to facts to allay their fears, doubts, suspicions and rumours. Thus, one of the pillars of a democratic state is the citizen's right

to know the facts, the true facts, about the administration of the country. Withholding of information, unless justified on a greater public interest, undermines public debate over public issues. This may ultimately reach the electoral process also. Similarly by releasing selected information or by twisting information, governments may be able to manipulate public opinion and falsify the consent of the community at large.

In a democratic polity, theoretically speaking, the people are the sovereign and government is their servant. The right to information is thus absolute as far as the 'sovereign public is concerned in order to instruct its servant - government. The government in a democratic country, derives its powers from the consent of the governed. In the absence of consent, government does not have just powers because, in a democracy, officials are only agents of the electorate. For citizens to believe in the democratic process, they must believe that they are part of the process. For citizens to believe that the process is just, it must be seen to be just. The, electorate needs information in order to perform the governing function. Thus the concept of right to information springs from a programme of self-government.

The basis of self-government is that each individual in the community has a right to determine, how he is collectively or individually governed. Implicit in this is the right of access to information on how decisions are made affecting him directly or indirectly. Thus, the notion of people's right to self-government, evidently implies right to gather information from their government even when the government resists disclosure.

The information sought may be in the public or private domain. The information within the public domain may be under the control of Government, the other may not be under the control of it. In such a case, the legitimate expectation of the citizens is that the Government would facilitate the availability of such information under a relevant legislation.

1A.3 MEANING OF INFORMATION

- As mentioned by Theordore Roszak - 'The original root of the word "Information" is the Latin word ‘Informer’ which means to fashion, shape, or create, to give, to form. Information is an idea that has been given a form, such as the spoken or written words. It is a means of representing an image or thought so that it can be communicated from one mind to another, rather than worrying about all the information afloat in the world, we must ask ourselves what matters to us, what do we want to know. It is having ideas and learning to deal with issues that is important, not accumulating lots and lots of data.

- The Ballentine's Law Dictionary defines it in a clear manner as acquired knowledge or knowledge of facts which advice and lead to the acquisition of knowledge, in common parlance. In the technical legal sense the meaning is The Right to Information Act, 2005 defines 'information'. This recent legislation guarantees right to

information which is available under the control of the public authorities.

- Right to Information can be defined as, "The human right to secure access to publicly held information and the corresponding duty upon a public body to make information available. 'A citizens' Right to Information should, therefore, cover not only the government but also those activities of private organizations and individuals which are likely to be of legitimate concern to citizens, or have an adverse impact on public resources or welfare. This will serve to empower them and enhance their capability of making informed choices.

- Information adds something new to our awareness and removes the vagueness of our ideas. Information is about democratization of communication. It is precisely because of this reason that the Right to Information has to be ensured for all.

Know your progress exercise 1:

Q.1) Explain what is meant by Right to Information?

_____

_____

_____

_____

_____

1A.4 NECESSITY AND IMPORTANCE OF RIGHT TO INFORMATION

Right to information is necessary because of the following reasons:

a) Transparency of Government:

There is a presumption that all that the government does is for the wellbeing of the people which means that this is done to further the objective of public wellbeing and is done for the Meaning honestly. This presumption has however eroded to a great extent in the recent times due to the misuse by public functionaries. Misappropriation and careless use of public funds calls for the need of public dealings to be transparent to check such things. Transparency helps in holding people accountable for any mishandling and mismanagement of public money and time.

b) Accountability of Government:

Ours being a democratic country, governance from village to central level is accountable to the people. People have a right to know what the government is doing, just as the elected representatives have a right to information on their behalf. Public Service gets more and

more accountable for performance in new-fangled framework of e-Governance and Right to Information.

c) Public Participation:

Since governmental works are carried out for the people, people must be involved in the planning process and they must know how things are being implemented. To participate in the planning process and making judgment, people should have sufficient knowledge about the nature of programme and project. This ensures acceptance of project by the people and avoids wastages. Hence democracy ensures, governance by the people's participation in the process of formulating decisions, public discussion of the issues involved in any decision and the existence of public awareness is so vital for facilitating such discussions. To fulfil the duty to participate in governance, people must have the necessary information. The effective performance of this duty depends upon the extent to which this right is actively realized.

d) Reducing Poverty:

The Right to information legislation is fundamental in furthering the development of society and in eradicating poverty. Effective anti-poverty programmes require accurate information on problems hindering development to be in the public domain. Meaningful debates also need to take place around the policies designed to tackle the problems of poverty. Information can empower poor communities to battle the circumstances in which they find themselves and help balance the unequal power dynamics that exist between people marginalized through poverty and their governments. This transparent approach of working helps poor communities to be visible on the political map so that their interests can be advanced. The right to information is therefore central to the achievement of the Millennium Development Goals. (MDGs)

e) Tackling Corruption:

The right to information is a potent tool for countering corruption and for exposing corrupt officials. The lack of transparency leads to suspicion of corruption even when it is absent, miring the government into unnecessary controversy and slowing down reforms. Officials can abuse their discretion to suit various political or other vested interests, as well as to misappropriate funds. The right to information is, therefore, important to check and tackle abuse of administrative discretion and to ensure fair process.

f) Protecting Civil Liberties:

The Right to Information is also necessary for protecting civil liberties, for example, by making it easier for civil society groups to monitor wrongdoing such as 'encounter killings' or the abuse of preventive detention legislation. Transparency of action and accountability perhaps are the two safeguards of civil liberties. The Right to Information increases the knowledge of the citizens regarding the existing laws, like Environment Protection Act, Consumer Protection Act, etc. This would ensure their active participation in the political and economic processes of the state.

g) Access to Parliamentary Information:

Parliament exists as a major centre for national decision-making processes. Representatives elected by the people come together to discuss matters of national importance and to enact legislations in the national interest. In this context, access to information is vital. Good access laws can provide a useful oversight and participatory mechanism for non-Cabinet Members of Parliament who, in very closed governments, are also sometimes left out of key decision-making processes. Members of Parliament can use the right to information more effectively to interact in their own constituencies, for example, by gaining access to up- to-date information from the bureaucracy about the impact of government policies on their electorate.

h) Equity of Economic Growth:

Economic development is enhanced and deepened by the right to information. As most experts agree, free information is crucial to the development of a modem economy capable of engaging in the globalised international marketplace. Information sharing, knowledge based development and economy, net-working economy, freedom of economic information, all the concerns taking towards the Right to Information issues. It is for this reason that most of the international financial and trade institutions, such as the World Bank and International Monitory Fund have repeatedly endorsed the importance of transparency and have included the implementation of effective right to information legislation in the country strategies, as a key to practical mechanism for promoting transparency.

i) Good Governance:

Right to Information can be used as an effective tool to usher in a regime of good governance. Good governance aims at putting an end to inconsistent government practices and helps in establishing a responsive State. The major characteristics of good governance include: strategic vision and consensus orientation, participation, rule of law, transparency, responsiveness, equity and inclusiveness,

effectiveness, efficiency and accountability. As the good governance concept put by the World Bank is inclusive of the transparency its application world-wide is bound to create a demand for the Right to Information Laws.

j) Expanding Rights:

In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by different countries, intergovernmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The right to information forms the crucial underpinning of participatory democracy. Hence, the Indian Judiciary took the Right to Information as the part and parcel of the right to freedom of speech and expression under Article 19 (1) (a) of the Constitution.

k) E-governance:

E-governance is a kind of 'window of opportunity' facilitating a much faster, convenient, transparent and dynamic interaction between the government and its people. Today, more and more information is being produced and made available through the Internet and the World Wide Web. Some of this information has restrictions on public access and use because of intellectual property protection, national security, privacy, confidentiality and other considerations. If investment on Information Technology is made and information is more restricted, then the benefits of such investment can hardly be realized. Thus promoting Right to Information becomes an essentiality in new information technology order.

I) Citizen Centric Approach:

Even in the reforms and re-invention of administration, the approach has shifted from 'institution centric' towards the 'citizen centric'. But, will it be possible to promote such reforms without Right to Information. Moreover, as has been put by Alvin Toffler, first came the Agriculture Wave, then the Industrial Wave, and now there exists the Information Wave.

In the light of these factors, it is essential to ensure transparency, accountability and good governance. The greater the access of the citizen to information, the greater the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on access, the greater the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights as citizens or make informed choices.

Know your progress exercise 2:

Q.1) Explain Importance of Right to Information?

_____

_____

_____

_____

_____

1A.5 RIGHT TO INFORMATION AND HUMAN RIGHTS

a) Human rights are the inalienable Human rights are the inalienable birth-rights of all human beings and are to be protected and promoted by the state. In the political parlance of human rights, the idea of good governance and participatory democracy are realized and materialized when the right to access to official information is guaranteed along with other rights, to all the citizens. Correct and reliable social, political and administrative information enable the people to be patriotic, role responsive, civilized and politically self-assured so that democracy survives and gains strength. The quality of democracy, therefore depends to a large extent on the degree to which information is ascertained. Otherwise, secrecy in government is an anti-democratic commission, perpetuating bureaucratic despotism.

b) As right to life is basic and primary concerning the civil rights of the individual, the right to know is the basis concerning political rights. Though this right has not been expressed directly, it is very much present in the right to vote, freedom of speech, expression and public opinion etc. Reliable and correct information are prerequisites for a man to be a good political citizen. For the correct choice of a candidate in elections, the citizens are to be well informed about the contestants. This strengthens both electoral behaviour and democracy.

c) The Biblical statement, 'Man lives not by bread alone', carries the same spirit. The spirit in a man is reason which develops from information.' Denying information about the law-makers tends to destroy the process of personality development. Hence, the right to information cannot be restricted by anyone even in the power structure, because the rights of the little man are precious to democracy. Since every little man in a liberal democratic polity is sovereign, his rights are to be given more importance than of his representatives. In other words, people's rights are always to be realized and protected to the betterment of the democratic system.

d) Most human rights violations, especially against poor and marginalized women and men, and Dalit's, tribal and minorities, occur resolutely behind, opaque walls of police stations and jails.

The entire criminal justice system has been constructed along colonial lines to be the most opaque and unaccountable wing of the state, which fosters the most extreme forms of repression and arbitrariness, and protects draconian laws, arbitrary arrests and detention. The bastions like jails, in any real democracy, need to be thrown open to public scrutiny and accountability. Information is crucial to a person in police custody or jails to his family members, and to human rights defenders.

Know your progress exercise 3:

Q.1) Explain Human Right and Right to Information?

_____

_____

_____

_____

1A.6 CONCLUSION

In other words, people's rights are always to be realized and protected to the betterment of the democratic system. Most human rights violations, especially against poor and marginalized women and men, and Dalits, tribal and minorities, occur resolutely behind, opaque walls of police stations and jails. The entire criminal justice system has been constructed along colonial lines to be the most opaque and unaccountable wing of the state, which fosters the most extreme forms of repression and arbitrariness, and protects draconian laws, arbitrary arrests and detention. The bastions like jails, in any real democracy, need to be thrown open to public scrutiny and accountability. Information is crucial to a person in police custody or jails to his family members, and to human rights defenders.

1A.7 REFERENCES

Alexander Meikheljohn, Political Freedom - The Constitutional Power of the People, Harper Brothers, New York, 1960

Chaturvedi, T.N, (Ed.), Secrecy in Government, Indian Institute of Public Administration, New Delhi, 1980.

Goel, S.L., Good-Governance: An Integrated Approach, Deep and Deep Publications Pvt. Ltd., New Delhi, 2007.

Ian Brownline and Guy S, Goodwin Gill, Basic Documents on Human Rights, Oxford University Press, New York, 2003

Narayana, P.S. and Reddy, G.B., Freedom of Information and Law, Gogia Law Agency, Hyderabad, 2003

Anil Maheswari and Faizan Mustafa, Right to Information - A No Win Situation, Ajantha Publications Co., New Delhi, 2003

B. History of Right to Information in the World

1B.1 OBJECTIVES

- To understand the right to information and development as a global scenario
- To understand The Universal Declaration of Human Rights
- To understand The International Covenant on Civil and Political Rights
- To understand The UNESCO Declaration and Right to Information
- To understand The United Nations Convention on the Right of the Child and Right to Information
- To understand United Nations Convention against Corruption and Right to Information
- To understand The European Union and Right to Information
- To understand The Commonwealth and Right to Information

- To understand Organization of American States and Right to Information
- To understand The European Convention on Human Rights and Right to Information
- To understand American Convention on Human rights and Right to Information
- To understand The African Charter on Human and People's Rights and Right to Information
- To understand The Rio Declaration on Environment and Development and Right to Information
- To understand World Conference on Human Rights and Right to Information
- To understand Civil Society Declaration to the World Summit and Right to Information
- To understand International Conference of Information Commissioners and Right to Information

1B.2 INTRODUCTION:

"Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. Public bodies should publish and widely disseminate documents of significant public interest. A refusal to disclose information may not be based on trying to protect government from embarrassment or the exposure of wrong doing."

The importance of right to information as a fundamental right is beyond doubt. The right to information is a right incidental to the constitutionally guaranteed freedom of speech and expression. The international movement to include it in the legal system gained prominence in 1946 when the General Assembly of the United Nations declared freedom of information to be a fundamental human right and a touchstone for all other liberties.

Several United Nations Organizations have also contributed to the right to information. The United Nations Development Programme (UNDP) adopted a public Information Disclosure Policy in 1997.The Policy Provides for a presumption in favour of disclosure. It enumerates specific documents which shall be made available to the public. The policy says a request for disclosure shall be responded within thirty working days and any denial of access to information must state reasons. The Policy makes provision for standard exceptions such as trade secrets, internal notes, memoranda and correspondence amongst UNDP staff, personal, health or employment related information, etc.

Similarly, World Bank adopted a detailed policy on the disclosure of information in 1993.Like the UNDP Policy; the World Bank Policy also

creates a presumption in favour of disclosure. It sets out a list of documents which are available on a routine basis from the Bank. The Policy provides for some broad exceptions such as information given to a bank on the understanding of confidentiality, the disclosure which would violate the personal privacy of the staff members, the disclosure of which would impede the integrity and impartiality of the Bank's deliberative process and the free and candid exchange of ideas between the Bank, its members, and its partners, etc. For the sake of convenience and ready reference, the relevant provisions of some of the International Conventions have been referred hereunder.

1B.3 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

The legislative embodiment of the right to information has long been recognised as underpinning all other human rights. Article 19 of the Universal Declaration of Human Rights of the United Nations signed on 10 December 1948, states unequivocally;

"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".

In USA, the Right to Information Act, 1966 was amended in 1974 after the Watergate. Thus proving Right to Information is a global phenomenon.

Thus the right to freedom of opinion and expression - from which flows the right to information - and the right to seek and receive information are unambiguous elements of a historic international law to which India is a signatory. The UN Declaration gives human rights precedence over the power of the State. While the State is permitted to regulate rights, it is prohibited from violating them.

Know your progress exercise 1:

Q.1) Explain **The Universal Declaration of Human Rights, 1948**?

1B.4 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

The International Covenant on Civil and Political Rights (ICCPR), which does have legal force and is a binding international treaty, was adopted by the General Assembly in 1966 and came into force in 1976, guarantees right to information in its Article 19 similar to above provisions of UN Declaration that:

1) Every one shall have the right to hold opinions without interference;

2) Every one shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information to all

kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice;

and

3) The exercise of the rights provided for in paragraph 2 of this article carries with it the special duties and responsibilities. It may, therefore be subject to certain restrictions, but those shall only be such as are provided by the law and are necessary

a) For respects of rights and regulations of others

b) For the protection of national security or of public order or of public health or morals,

Know your progress exercise 2:

Q.1) **Explain The International Covenant on Civil and Political Rights 1966**?

_____

_____

_____

_____

1B.5 THE UNESCO DECLARATION, 1978

Article I of the UNESCO Declaration on 'Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War', 1978 states:

"The strengthening of peace and international understanding, the promotion of human rights and the countering of racialism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information".

Article II of the Declaration states: "... the exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.

Know your progress exercise 3:

Q.1) Explain **The UNESCO Declaration, 1978**?

_____

_____

_____

_____

1B.6 THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, 1989

Article 13 of the United Nations Convention on the Rights of the Child, 1989 states as follows;

a) The child shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers either orally or in writing or in print in the form of art or through any other media of the child's choice,

b) The exercise of this right may be subject to certain restrictions but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others or (b) For the protection of national security or of public orders or of public health or morals.

Know your progress exercise 4:

Q.1) Explain **The United Nations Convention on the Rights of the Child, 1989**?

_____

_____

_____

_____

_____

1B.7 UNITED NATIONS CONVENTION AGAINST CORRUPTION, 2003

Article 13 of the 'UN Convention against Corruption', adopted by the United Nations General Assembly on 31st October 2003 identifies:

(i) effective access to information for public;

(ii) undertaking public information activities contributing to non-tolerance of corruption (including conducting public education programmes) and

(iii) respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption... as important measures to be taken by Governments for ensuring the participation of society in governance.

Article 10 of the 'UN Convention against Corruption' states: "... to combat corruption, each (member State) shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to

enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes and take measures for:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, (including) periodic reports on the risks of corruption in its public administration." It may be added here that the International bodies such as European Union, Commonwealth and Organisation of American States have developed guide lines for implementing the right to information.

Know your progress exercise 5:

Q.1) Explain The **United Nations Convention against Corruption, 2003**?

_____

_____

_____

_____

_____

1B.8 THE EUROPEAN UNION

The European Union (EU) is a body committed to further the political, social and economic integration of its 15 members. The Treaty of EU (the Maastricht Treaty) came into force in 1993. The Treaty included a declaration on the Rights of Access to Information which said:

'The Conference considers that transparency of the decision- making process strengthens the democratic nature of the institutions and the public confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on the measures designed to improve public access to the information available to the institution.'

Article 11(1) of the 2000 Charter of Fundamental Rights of the European Union explicitly guarantees the right to receive and impart information and ideas without interference by public authority and regardless of frontiers. At an operational level, the 1997 Amsterdam Treaty of the EU

granted a specific right of access to documents and specifically required detailed rules regarding access to be set out in secondary legislation. The Treaty came into force in 1999 and the EU Regulation on Freedom of Information was passed in 2001. It covers "all documents held by an institution, that is to say, drawn up or received by it and in its possession, in all areas of activity of the European Union". The Regulation obligates both the European Union Commission and the European Parliament to create public registers of documents on the Internet and to ensure that references are provided to all documents in the register as soon as they are created. In 2002, the European Ombudsman promulgated a Code of Good Administrative Behaviour, which requires officials of all institutions of the EU to "provide members of the public with the information that they request", and if they cannot to state the reasons for non-disclosure.

Thus a Code of Conduct on Public Access to Commission and Council documents was adopted in 1994, which provided for the access to documents held by the Commission and Council. In 1997, European Parliament adopted its own rules facilitating right to information.

Know your progress exercise 6:

Q.1) Explain **The European Union and** right to information?

_____

_____

_____

_____

_____

1B.9 THE COMMONWEALTH

"The Commonwealth Freedom of Information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions." - Commonwealth Expert Group on the Right to Know, 1999.

The Commonwealth is an association of 54 countries which have been formed colonies of Great Britain Commonwealth Law Ministers at their meeting in Barbados in 1980 emphasized that "public participation in the democratic and governmental process was at the most meaningful when citizens had adequate access to official information."

During 1990s the Commonwealth, guided its fundamental political values enshrined in the 1991 Harare Declaration and tried to promote right to information. In March, 1999, a Commonwealth Expert Group meeting in London adopted a document which listed a number of Principles on the right to information. These principles were adopted by the Law Ministers at their May, 1999 Meeting. The Principles got the seal of approval at

Durban Meeting of Commonwealth Heads of Governments on 15th November, 1999. The Principles provide that Member States should recognize right to information as a legal and enforceable right, there should be a presumption in favour of disclosure, exceptions to disclosure Document issued by the Commonwealth Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development, London, 30-31 March 1999 should be minimal and there should be a provision for an independent authority to review. In 2002, Commonwealth Law Ministers specially recognized that "the right to access information was an important aspect of democratic accountability and promoted transparency and encouraged full participation of citizens in the democratic process"

The Commonwealth Law Ministers encouraged the Commonwealth Secretariat to actively promote the Principles, which the Commonwealth Heads of Government approved in November 1999 Secretariat has designed a Model Law on Freedom of Information to serve as a guide to law-making. More recently, at the last Commonwealth Heads of Government Meeting in

Nigeria in 2003, the Heads specifically agreed that: Among the objectives we seek to promote are... the right to information.

Know your progress exercise 7:

Q.1) Explain **The Commonwealth and** right to information?

_____

_____

_____

_____

_____

1B.10 ORGANIZATION OF AMERICAN STATE

"Access to public information is a requisite for the very functioning of democracy, greater transparency, and good governance and that, in a representative and participatory democratic system, the citizenry exercises its constitutional rights, inter alia, the rights to political participation, the vote, education, and association, by means of broad freedom of expression and free access to information"

Organisation of American States General Assembly Resolution, 2003.The Organization of American States (OAS) adopted a Declaration of the Rights and Duties of Man in 1948. In 1969, the American Convention on Human Rights was signed at San Jose as a binding international convention. Article 13 of the American Convention addresses freedom of thought and expression. It is not only an extension of the earlier declarations, but has been broadened to include the broadcast media and other developments in communications. Article 13 (1) of the American

Convention on Human Rights, 1969 states that: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers either orally, in writing, in print, in the form of art, or through any other medium of one's choice" Paragraphs 2 and 3 of the Inter-American Declaration of Principles on Freedom of Expression adopted in 2000 specially recognises that "access to information held by the state is a fundamental right of every individual. State has obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of real and imminent danger that threatens national security in democratic societies". On June, 2003, the OAS General Assembly adopted resolution on "Access to Public Information: Strengthening Democracy".

The Inter-American Court of Human Rights has also held right to information as part and parcel of freedom of speech and expression. The Inter-American Commission on Human Rights which was established in 1960 and which he is the responsibility to implement American Convention on Human Rights approved an Inter-American Declaration of Principles on Freedom of Expression in October, 2000. The Declaration explicitly recognizes the right to information as a fundamental human right. It specifically recognises that "access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right.

This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies. The declaration was approved by the Inter-American Commission on Human Rights in October 2000. In furtherance of these commitments, on 10^ June, 2003, the OAS General Assembly adopted a specific resolution on Access to Public Information: Strengthening Democracy, the OAS Permanent Council is currently considering reports of the OAS Special Rapporteur for Freedom of Expression regarding operationalsing the Resolution.

Know your progress exercise 8:

Q.1) Explain Organization of American State and right to information?

_____

_____

_____

_____

_____

1B.11 THE EUROPEAN CONVENTION ON HUMAN RIGHTS, 1950

The Council of Europe is an inter-governmental organization composed of 43 member States. It is devoted to promoting human rights, education and culture. One of its foundational documents is European Convention on Human Rights, 1950 which came into force in 1953.Article 10 of the European Convention of Human Rights, 1950 deals with freedom of expression:

a) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers. The Article shall not prevent States from requiring the licensing of broadcasting Television or cinema enterprises,

b) The exercise of this freedom carries with it the duties and responsibilities. This may be subject to such formalities, conditions, restrictions as prescribed by law and are necessary in a democratic society in the interest of national security, territorial integrity or public safety for the prevention of disorder or crime or the protection of health or morals or the protection of the reputation or rights of others or preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

Know your progress exercise 9:

Q.1) Explain **The European Convention on Human Rights and** right to information?

_____

_____

_____

_____

_____

1B.12 THE AMERICAN CONVENTION ON HUMAN RIGHTS, 1969

Article 19 of The American Convention on Human Rights, 1969 addresses with freedom of thought and expression. It states that

1) Every one shall have the right to freedom of thought and expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of the form of art or through any other medium of one's choice.

2) The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall not be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary in order to ensure, respect for the rights or reputations of others or the protection of national security, public order or public health or morals.

3) The right of expression may not be restricted by indirect methods or means such as the abuse of government or private controls over news print, radio, broadcasting frequencies or equipment used in the dissemination of information or by any other means tending to impede the communication and circulation of ideas and opinions.

4) Notwithstanding the provisions of paragraph 2 above public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood adolescence and

5) Any propaganda for Third World War and any advocacy of national racial or religious hatred that constitute the incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religious language or national origin, shall be considered as offences punishable by law.

Know your progress exercise 10:

Q.1) Explain **The American Convention on Human Rights and** right to information?

_____

_____

_____

_____

_____

1B.13 THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS, 1981

Article 13 of African Charter on Human and People's Rights, 1981 states:

Article 9 of the Charter states that: (a) every individual shall have the right to receive information, (b) every individual shall have the right to express and disseminate his opinions in accordance with the law.

African Charter on Human and People's Rights, 1981 sometimes referred to as the Banjul Charter, came into force in October, 1986. This instrument lays the foundation for a human rights system in Africa. It relies upon African documents and traditions, rather than United Nations declarations and covenants.

From the above provisions in the international arena, it can be seen that the right to information is directed to be guaranteed by the member countries to their citizens is not absolute and that reasonable restrictions in the exercise of the said right can be imposed in the interest of national security, public order and peace.

In 2002, the African Union's African Commission on Human and Peoples' Rights adopted a Declaration of Principles on Freedom of Expression in Africa which recognises that "public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information". Part IV of this Declaration deals explicitly with the right to information. Although it is not binding, it has considerable persuasive force representing as it does the will of a sizeable section of the African population.

The following is the summary of African Union Declaration of Principles:

a) Everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;

b) Any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;

c) Public bodies shall be required, even in the absence of a request, to actively publish important information of significant public interest;

d) No one shall be subject to any sanction for releasing in good faith information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment; and

e) Secrecy laws shall be amended as necessary to comply with freedom of information principles.

Know your progress exercise 11:

Q.1) Explain **The American Convention on Human Rights**?

_____

_____

_____

_____

_____

1B.14 RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT, 1992

As a corollary to the above international documentation, the following as to the environment protection also provides for Right to Information in the international arena.

Principle 10 of the Rio Declaration on Environment and Development' 1992 first recognized the fact that access to information on the environment, including information held by public authorities, is the key to sustainable development and effective public participation in environmental governance. Agenda 21, the 'Blueprint for Sustainable Development', the companion implementation document to the Rio Declaration, states: "Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information protection measures.

At the regional level, following the Rio Summit on the Environment, the UN Economic Commission for Europe - representing a gathering of European states - adopted a Convention of Access to Information, Public participation in decision making and Access to justice on Environmental Matters at Aarthus in Denmark on 25th June, 1988.This pioneering Convention sets out three key rights:

1) The right of everyone to receive environmental information held by public authorities;

2) The right to participate in environmental decision-making; and

3) The right to challenge alleged abuses of these two rights in a court of law.

The convention emphasizes how access to information lies at the heart of securing wider social benefits and its examples are mirrored by developments at national level. In Bulgaria, environmental concerns about the aftermath of the Chernobyl disaster led to the passing of Right to Information Law.

Know your progress exercise 12:

Q.1) Explain **Rio Declaration on Environment and Development**?

_____

_____

_____

_____

_____

1B.15 WORLD CONFERENCE ON HUMAN RIGHTS, 1993

The World Conference on Human Rights, held in Vienna in 1993 has declared that the Right to Development adopted by United Nations General Assembly in 1986 is a universal and inalienable right and an integral part of fundamental human rights. The declaration recognizes that

democracy, development and respect for human rights and fundamental freedoms are interdependent, and mutually reinforcing. Right to freedom of expression is regarded as closely linked to the Right to Development. The right to seek, receive and impart information is not merely a corollary of freedom of opinion and expression; it is a right in and of itself. As such, it is one of the rights upon which free and democratic societies depend. It is also a right that gives meaning to the right to participate which has been acknowledged as fundamental to men for realization of the Right to Development.

Know your progress exercise 13:

Q.1) Explain **World Conference on Human Rights**?

_____

_____

_____

_____

_____

1B.16 THE CIVIL SOCIETY DECLARATION TO THE WORLD SUMMIT, 2003

The Civil Society Declaration to the World Summit on the Information Society, held at Geneva on 8th December, 2003 and declared that:

"We are committed to building information and communication societies that are people-cantered, inclusive and equitable. Societies, in which everyone can freely create, access, utilize, share and disseminate information and knowledge, so that individuals, communities and people are empowered to improve their quality of life and achieve their potential."

"Every one every where, at any time should have the opportunity to participate in communication processes and no one should be excluded from their benefits. This implies that every person must have access to the means of communication and must be able to exercise their right to freedom of opinion and expression, which includes the right to see, receive and impart information and ideas through any media and regardless frontiers."

"A democratic perspective on information and communication societies, in which information is crucial for citizen, is necessary in order to make choices grounded on the awareness of alternatives and opportunities. Information and communication are the foundation for transparency, debate and decision making. They can contribute to a culture and a practice of co-operation."

Know your progress exercise 14:

Q.1) Explain **The Civil Society Declaration to the World Summit, 2003**?

_____

_____

_____

_____

_____

1B.17 INTERNATIONAL CONFERENCE OF INFORMATION COMMISSIONERS

The 5th International Conference of Information Commissioners (ICIC-2007) was held in Wellington, New Zealand, November 26- 29. During the closed meetings, the information commissioners and government representatives discussed issues and challenges they face in enforcing FOI laws in their respective countries. Emerging from the commissioners' meeting was a plan to institute an electronic communications tool for commissioners and their staffs to communicate with one another and seek advice and assistance as to issues arise in their countries.

The Honorable Annette King, New Zealand Minister of Justice, spoke about the challenges of the past 25 years in implementing FOI in New Zealand, in particular balancing openness with protection of deliberative processes of government. Some highlights of the myriad topics included: how to create a culture of openness among civil servants; the interaction between freedom of information and development; designing effective oversight bodies to enforce freedom of information laws; how governments respond to politically sensitive requests; the Asian experience, managing freedom of information backlogs and caseloads; electronic records; and the use of information technology.

It is noteworthy that the Secretary-General of the United Nations, Kofi Annan observed in 2003 that: "The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task... is to make that change real for those in needs, wherever they may be. With information on our side, with knowledge a potential for all, the path to poverty can be reversed. “With assured information, marginalised groups will be given their rightful voice and a powerful tool to scrutinise and engage with the development activities being directed at them. They can access information about their development rights, as well as the projects and programmes from which they are supposed to be benefiting. In fact, experience shows that personal information is the most common type accessed under right to information laws. People use the law to ensure that they receive proper entitlements and find out what the government is doing for them or for their locality.

1B.18 CONCLUSION:

Most of the democratic countries have Right to Information laws.' The Right to Information has been recognised at global level and many countries have signed number of conventions which guarantee this right.

Know your progress exercise 15:

Q.1) Explain importance of International Conference of Information Commissioners?

_____

_____

_____

_____

_____

1B.19 REFERENCES:

- UN Doc E/CN4/1948/40, 28th January, 1948,
- Public Infonnation Disclosure Policy, UNDP, 1997.
- The World Bank Policy on the Disclosure of Information (Washington, DC: World Bank, 1994).
- Rowat, Donald C, Laws on Access to Official Documents, in Secrecy in Government,
- T. N. Chaturvedi, (ed.): Indian Institute of Public Administration, New Delhi, 1980.
- Basic Documents on Human Rights, Ian Brownline and Guy S. Goodwin Gill, Oxford University Press, New York, 2003.
- http://unhchr.ch/html/menu3b/d_media.htm
- htpp://www.europarl.eropa.eii/charter/pdf.text_en.pdf
- Salu Nigam, Right to Information: Law and Practice, 2006
- 9th International Conference of American States, Bogotá, Columbia, 2nd May, 1948.
- http://www.thecommonwealth.org/whoweare/declarations/harare.html.
- The Durban Communique, Commonwealth Heads of Government Meeting, Durban, 15 November, 1999.
- Freedom of Information Act, Commonwealth Secretariat Doc. LMM (02)6, Annex, September 2002.
- Organisation of American States General Assembly Resolution, 2003.

- http://wwww.cidh.org/Bascos/Englisliasic3.America%20convention.htm.
- http://www.umn.edu/humaiirights/instree/zlafchar.htm
- Raj Kumar Pruthi, Manual of Right to Infonnation Act,
- P.Shalu, Nigam, Right to Information: Lawand Practice, 2006. http://www.worldsuminit2003.de/download.enAVSIS-cs-docl/o8Dec2003.eng.rtf

❄❄❄❄❄❄❄

1C) RIGHT TO INFORMATION LAWS IN OTHER COUNTRIES

1C.1 OBJECTIVES:

- To understand the **evaluation of Right to Information**
- To understand **Right to Information Laws in Europe countries-non-European countries and other countries.**
- To understand **reasons for passing Right to Information in various countries**

1C.2 INTRODUCTION:

The Right to Information Act is among the strongest pieces of legislation in the world providing citizens access to public documents. Indian law makers and civil society had studied the experience of other countries and the Act has incorporated best practices from information access laws of countries as diverse as the United States, Sweden, South Africa, United Kingdom, Mexico, Canada and even the Pakistan Freedom of Information Ordinance 2002.

The right to information has been recognized in various countries by either incorporating it in the constitution itself or by enacting a separate legislation on the subject or by both. In some countries, the right has been recognized by the activist judicial courts, even in the absence of any specific text in the constitution or statutory recognition.

Hence, the following study on Right to Information Laws in other countries is necessary to understand.

1C.3 SWEDEN

Sweden was the first country in the world which gave its citizens the right to information way back in 1766 when its Parliament passed the famous Freedom of the Press Act. It is interesting to note that today this Act is a part of Swedish Constitution.

1C.4 EUROPE COUNTRIES

The constitutions of several other countries in Europe such as Poland, (Article 61) Bulgaria, (Article 41), Hungary (Article 61(1)),

Lithuania (Article 25 (5)), Estonia (Article 44), Albania, (Article 23), Belgium, (Article 32), Netherlands, (Article 110), Spain, (Articlel05 (b)),

Moldavia, (Article 24), Slovakia, (Article 26), Russia (Article 24 (2)) and Romania, (Article 31) incorporated freedom of information in their constitutions.

So all so, most recently drafted constitutions in Europe, Asia and Africa included a provision conferring right to information. Since these constitutions are drafted at a time when right to information is firmly recognized as an international human right, it is not surprising that these new constitutions gave due importance to this vital right. The constitutions which were drafted in the early second half of 20th century

1C.5 NON-EUROPEAN

Similarly, several non-European countries also recognized the right to information in their constitutions such as Nepal (Article 16, Nepal by its recent enactment of Right to Information law, it became 69 country in the world in passing the same), Philippines, (Article III, Sec.2)

Chapter 2, Article 1, Para (1) of the Constitution, which incorporated the Freedom of Information Law in Sweden. Malawi (Article 37), Tanzania (Article 18 (2)), Mozambique (Article74), Peru (Article 200 (3)) and Argentina (Article 43), etc.

1C.6 JAPAN

Japan's Law concerning Access to Information held by Administrative Organs came into effect in 2001. such as our Indian Constitution do not include a right to information in the text of their constitutions because at that point of time, right to information was not given due importance in

comparison to other civil and political rights which were considered more important in the era of colonialism.

In several countries where the constitutional text does not provide for the right to information, it has been recognized by the superior courts such as in Japan, where the apex court established in two high profile cases, the principles oishiru kenri (the 'right to know') implicit in Article 21, which provides for freedom of speech and expression.

1C.7 ASIAN COUNTRIES

Neighbouring South Korea, the right to information was similarly inferred. Courts in India and Sri Lanka have also interpreted constitutional right of free speech in such a way as to include right to information. Recently, several Asian countries have also passed freedom of information laws. Hong Kong adopted a Code on Access to Information in 1995. South Korea enforced Disclosure of Information Act in 1998, Thiland's Official Information Act came into effect in 1997.

C.8 OTHER COUNTRIES

Several other countries such as Indonesia, Pakistan and Taiwan are in the process of enacting right to information laws in the near future. Similar trend is visible in Latin America, East Europe and to some extent in Africa.

C.9 REASONS FOR PASSING

There are number of reasons for passing, right to information laws.

a) Since 1980, the collapse of authoritarianisms that include specific guarantee of the right to information. Their constitutional guarantees often require the adoption of new laws on information access.

b) At the same time, older democracies such as the United Kingdom are seeing the wisdom of enacting legislation.

c) the international bodies such as the Commonwealth, Council of Europe and the Organization of American States have drafted guidelines or model legislation to promote freedom of information.

d) The World Bank, the International Monetary Fund and other donors are also pressing countries to adopt access to information laws as part of an effort to increase governmental transparency and reduce corruption.

e) Finally, there is an agitation from media and civil society groups, both domestic and international, for greater access to government held information and for more participation in governance.

1C.10 CONCLUSION :

In the last two decades, governments around the world have become increasingly more transparent. Over 169 countries now have comprehensive laws to facilitate access to state records; and over 30 more are in the process of enacting such legislation. Although freedom of information laws have existed since 1776, when Sweden passed its Freedom of the Press Act, the last 20 years saw an unprecedented number of states adopting access to information legislation. Some of the statutes passed in different countries on right to information in recent times have been discussed here briefly.

Check your progress exercise 1 :

Q1) Explain **Right to Information Laws in Europe countries**

-non-European countries and other countries ?

_____

_____

_____

_____

_____

_____

Q2) Explain **reasons for passing Right to Information in various countries ?**

_____

_____

_____

_____

_____

_____

1C.11 REFERENCES :

- Freedom of Information Law in Sweden. Constitutional Issues in Freedom of Information; International and National Perspectives, Faizan Mustafa, 2003.
- S.P. Gupta V. Union of India and others. AIR 1982 SC 149 in India and Fernando v. Sri Lanka Broadcasting Corporation and others, 30 May, 1996,
- Supreme Court, Application No.81/95, atp 16 in Sri Lanka

❄❄❄❄❄❄❄

2

DEVELOPMENT OF RTI IN INDIA

A) Supreme Court/High Courts judgments
B) Initiatives and Movements: MKSS, NCPRI, CHRI, Anna Hazare and others
C) Information Acts in States

2A) Supreme Court/High Courts judgments

Unit Structure

2A.1 OBJECTIVES

- To understand the contribution of Indian Courts in creation of Right to Information.
- To understand the Right to Information and Freedom of Speech and Expression
- To understand the Right to Information and Freedom of the Press
- To understand the Right to Information and Imposition of Reasonable Restrictions
- To understand the Right to Information and Right to Life
- To understand the Right to Information and Right to Privacy
- To understand the Right to Information and Principles of Natural Justice
- To understand the Right to Information and Public Interest Litigation
- To understand the Right to Information and the Rights of the Arrested Person

2A.2 INTRODUCTION

Justice K. K. Mathew, Supreme Court of India said, "In a government where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people have a right to know every public act, everything that is done in a public way, by their public functionaries. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption."

In a democracy, people cannot govern themselves properly unless they are aware of the social, political, economic and other issues confronting them. To enable them to make a proper judgment on those issues, they must have the benefit of a range of opinions on those issues. This plurality of opinions, views and ideas is indispensable for enabling them to make an informed judgment on those issues, to know what is their true interest, to make them responsible citizens, to safeguard their rights as also the interests of society and the State. All the constitutional courts of leading democracies have recognized and reiterated this aspect. Indian judiciary is no exception for this and has played an active role in deciding many cases on Right to Information.

Judicial thinking on the subject of right to know and criticism by various agencies of the non-disclosure of the information by the government departments has compelled the central government to enact the long awaited law on the subject. The Right to Information Act, 2005 provide for setting out a practical regime of right to information for citizens to secure access to information held by public authorities in order to promote transparency and accountability in the working of every public authority.

The judiciary in India has also been playing a vital role in the protection and preservation of the right to know or right to information before and after the enactment of law on Right to Information. The Supreme Court and the High Courts of India have been interpreting the right to know or right to information as an integral part of Article 19(1) (a) and Article 21 of the Constitution. The decisions of the Courts are discussed under several headings for the purpose of dealing them separately for an easy of understand the subject.

2A.3RIGHT TO INFORMATION AND FREEDOM OF SPEECH AND EXPRESSION

a) State of U.P. V. Raj Narain : (AIR 1975 SC 865)

In this case for the first time the Supreme Court of India has held that the 'Right to Information' is a fundamental right. Judicial

thinking on the subject of right to know and criticism by various agencies of the non-disclosure of the information by the government departments has compelled the central government to enact the long awaited law on the subject. The Right to Information Act, 2005 provide for setting out a practical regime of right to information for citizens to secure access to information held by public authorities in order to promote transparency and accountability in the working of every public authority.

For many decades, despite the establishment of a parliamentary democracy in India, there was no legal right to information. It was through a creative interpretation of Article 19 (1) of the Constitution dealing with the fundamental freedom of speech and expression to all citizens, the Supreme Court carved out a fundamental right to information as being implicit in the right to free speech and expression. This right is of special importance to the media whose lifeline is information and whose business is to communicate information to the electorate so that the latter may make informed choices.

b) Ramesh Thappar v. State of Madras:

One of the earliest cases where the Supreme Court laid emphasis on the people's right to know was Romesh Thappar v. State of Madras. In this case, the petitioner had challenged an order issued by the then Government of Madras under Section 9(1) (a) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the circulation of the petitioner's journal Cross Roads and the order was struck down as violative of the right to freedom of speech and expression under Art. 19 (1) (a). Again in Indian Express Newspapers, Bombay (P) Ltd. v. Union of India the Court relied on the following observation: "The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves."

The court added that the "Freedom of expression, as learned writers have observed, has four broad social purposes to serve: it helps an individual to attain self-fulfilment, it assists in the discovery of truth where the Supreme Court has clearly mentioned that freedom of speech and expression implies right to know decision-making, and it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In brief, the fundamental principle involved here 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."

In a later judgment the Supreme Court, while considering the scope of Article 19(l)(a) in the context of advertising or commercial speech, held that the public has a right to receive information. The question which arose in that case was whether advertisements being for commercial gain, could avail of the protection guaranteed under Article 19(1) (a). The court held that the economic system in a democracy would be handicapped without there being freedom of 'commercial speech'.

c) In Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal:

In Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal the Supreme Court, while considering the rights of a person to telecast a sports event on television through the use of air waves held that the right under Art. 19(1)(a) includes, the right to receive and acquire information and that viewers have the right to be informed adequately and truthfully. It was further held that although a person seeking to telecast a sports event when he himself is not participating in the game is not exercising his right to self-expression, he is seeking to educate and entertain the public which is part of the freedom of expression. The Court also held that the right of the viewer to be entertained and informed is also an integral part of the freedom of expression.

d) Dinesh Trivedi v. Union of India:

In Dinesh Trivedi v. Union of India while considering the questions of the disclosure of the Vohra Committee Report, the Supreme Court once again acknowledged the importance of open government in a participative democracy. The Court observed that: "In modem constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare." It went on to observe that "democracy expects openness and openness is concomitant of a free society and the sunlight is a the best disinfectant"

f) In Life Insurance Corporation v. Manubhai:

In Life Insurance Corporation v. Manuhhai D. Shah the Supreme Court explained the importance of freedom of speech and expression in India by mentioning as under; "Speech is God's gift to mankind. Through speech, a human being conveys his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus natural right that a human being acquired on birth. It is, therefore, a basic right that everyone has the right to freedom of opinions without interference and to seek, receive and impart information and ideas, through any media and regardless of frontiers proclaimed the Universal Declaration of Human Rights."

In this case, the Consumer Education and Research Centre, Ahmedabad published a study entitled "A Fraud on Policyholders". It was a scientific research made into the working of the Life Insurance Corporation (LIC). This study tried to portray and establish the discriminatory practices, which the Corporation was alleged to have adopted and adversely affected a large number of policy holders, their investment policies, their expense ratio, availability of term insurance and other cognate matters.

In response to this the Director of the Corporation offered a reply to it which was published in a national newspaper, the Hindu. In that reply, he tried to challenge the conclusions recorded in the study prepared by the centre. The Director's reply was also published by the corporation in Yogakshema', a journal run by the Corporation. On a scientific and studies basis, the Executive Trustee of the Centre (petitioner) re-joined the Director and replied. Since Yogakshema had published the Director's reply, the petitioner requested the Corporation to publish his reply also in Yogakshema. The corporation refused to do so. In these circumstances, the Gujarat High Court in Prof. Manubhai D. Shah v. Life Insurance Corporation ruled that the action of the Corporation was violative of the petitioner's fundamental rights under Article 19(1) (a) and Article 14.The Corporation is a public body and belongs to no individual. Therefore, the considerations which govern the case of an individual do not apply to a statutory public body. Every citizen has a right to demand the State to make available to him a particular channel or channels for publishing his studies, criticism of the concerned branch of public administration. To make such an opportunity available to an admirer and to deny it to a critic is to deny to him his freedom of speech and expression and to throttle democracy. In a democratic polity, though people may not directly participate in governmental working or public administration, they have a right to demand of those who are in charge of their destiny, for the time being how they deal with the problems which they are facing. A corporation which carries on the business of life insurance in the shape of a statutory monopoly is answerable to the people of India, with whose finds it deals and to whose welfare it claims to cater. "The corporation is a public body and belongs to no individual."

The court rejected the claim made by the corporation to the editorial privilege and absolute discretion to publish or not to publish an article as being inconsistent with the fundamental rights guaranteed by the constitution. The court also rejected as untenable, the contention that ‘Yogakshema' was a house magazine and not a mass media. Merely because, it is interested in a particular subject-matter and happens to find its circulation amongst officers, employees and agents of the corporation, it does not attain the character of a house magazine. Under the pretext and guise of publishing a house magazine, the Corporation cannot violate the fundamental rights of the petitioner. A house magazine cannot claim any privilege against the fundamental rights of a citizen.

The court also held it against right to equality to make available public funds to an admirer and not to a sober critic. Both have an equal place in the social order and both must be treated equally and alike. Thus, refusal

to the petitioner to make 'Yogakshema' available for voicing his studied criticism violated right to equality.

The matter then came before the Supreme Court in Life Insurance Corporation of India v. Manubhai D, Shah The Supreme Court has stated in this case that a liberal interpretation should be given to the right of freedom of speech and expression guaranteed by Article 19 (1) (a). The Court has characterized this right as a "basic human right". This right includes "the right to propagate one's views through the print media or through any other communication channel, e.g., the radio and television". Thus, every citizen "has the right to air his or her views through the print or electronic media subject, of course, to permissible restrictions imposed under Article 19 (2) of the constitution".

In the instant case, the Supreme Court was called upon to decide the question whether the LIC was right in refusing to publish the rejoinder by the respondent in Yogakshema. Answering in the negative, the Court pointed out that the attitude of the LIC was both "unfair and unreasonable"-unfair because fairness demanded that both viewpoints were placed before the readers and unreasonable because there was no justification for refusing publication. By refusing to print and publish the rejoinder the LIC had violated the respondent's fundamental right.

In this connection it is appropriate to mention some of the observations made by American courts in this area. A constitutional provision is never static; it is ever-evolving and ever-changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. If such an approach had been adopted by the American courts, the First Amendment- (1791) -" Congress shall make no law abridging the freedom of speech, or of the press",-- would have been restricted in its application to the situation then obtaining, and would not have catered to the changed situation arising on account of the transformation of the print media. It was the broad approach adopted by the Court which enabled them to chart out the contours of ever-expanding notions of press freedom. Justice Frank further observed: "....the language of the First Amendment is to be read not as barren words found in dictionary but as symbols of historic experience illuminated by the presuppositions of those who employed them".

Adopting this approach in Joseph Burstyn, Inc. v. Wilson, the court rejected its earlier determination to the contrary in Mutual Film Corporation v. Industrial Commission of Ohio^^ and concluded that expression through motion pictures is included within the protection of the First Amendment. The court thus expanded the reach of the First Amendment by placing a liberal construction on the language of that provision. It will thus be seen that the American Supreme Court has always placed a broad interpretation on the constitutional provisions for the obvious reason that the Constitution has to serve the needs of an ever-changing society.

The same trend is discernible from the decisions of the Indian courts. It must be appreciated that the Indian Constitution has separately enshrined

the fundamental rights in Part-Ill of the constitution since they represent the basic values which the people of India cherished when they gave unto themselves, the constitution for free India. That was with a view to ensuring that their honour, dignity and self-respect will be protected in free India. They had learnt a bitter lesson from the behaviour of those in authority during the chance. They, therefore, considered it of importance to protect specific basic human rights by incorporating a Bill of Rights in the constitution in the form of fundamental rights.

Every free citizen has an undoubted right to lay what sentiments he pleases before the public to forbid this, except to the extent permitted by Art. 19(2), would be an inroad on his freedom. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest. It is manifest from Article 19 (2) that the right conferred by Article 19 (1) (a) is subject to imposition of reasonable restrictions in the interest of amongst others, public order, decency or morality or in relation to defamation or incitement to an offence. It is, therefore, obvious that subject to reasonable restrictions placed under Article 19 (2), a citizen has a right to publicise, circulate and disseminate his views and any attempt to thwart or deny the same would offend Article 19 (I) (a). Hence, the arena of Right to Information is implicit in Article 19 (1) (a) of the Constitution.

Check your progress exercise 1:

Q1) Explain the contribution of Indian Courts in creation of Right to Information?

_____

_____

_____

_____

_____

2A.4 RIGHT TO INFORMATION AND FREEDOM OF THE PRESS

The Freedom of Press as one of the members of the Constituent Assembly rightly said is one of the terms around which the greatest and the bitterest of constitutional struggles have been waged in all countries where liberal constitutions prevail. The said freedom is attained by considerable sacrifice and suffering and ultimately, it has come to be incorporated in the various written constitutions.

James Madison when he offered the Bill of Rights to the Congress in 1789 is reported as having said: "The right of freedom of speech is secured, the liberty of the press is expressly declared to be beyond the reach of this Government."' Even where there are no written constitutions, there are well established constitutional conventions or judicial pronouncements,

securing the said freedom for the people. The basic documents of the United Nations and of some other international bodies to which reference will be made hereafter give prominence to the said right.

The leaders of the Indian Independence movement attached a special significance to the freedom of speech and expression which included freedom of press apart from other freedoms. During their struggle for freedom, they were moved by the American Bill of Rights containing the First Amendment to the Constitution of the United States of America which guaranteed the freedom of the press.

Pundit Jawaharlal Nehru in his historic resolution containing the aims and objects of the Constitution to be enacted by the Constituent Assembly said that the Constitution should guarantee and secure to all the people of India among others freedom of thought and expression. He also stated elsewhere that " I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than all or administrative actions which interfere with it contrary to the constitutional mandate.

The Supreme Court while dealing with the freedom of the press in Romesh Thappar v. State of Madras held: "The Freedom lay at the foundation of all democratic organisations, for without free political discussion, no public education, so essential for the proper functioning of the processes of population government, is possible. A freedom of such amplitude might involve risks of abuse It is better to leave a few of its noxious branches to their luxuriant growth, that, by pruning them away, to injure the vigour of those yielding the proper fruits". In the above case and Brij Bhushan v. State of Delhi the Supreme Court firmly expressed its view that there could not be any kind of restrictions on the freedom of speech and expression other than those mentioned in Art. 19 (2) and thereby made it clear that there could not be any interference with that freedom in the name of public interest.

In Bennett Coleman v. Union of India, A.N. Ray, C. J. on behalf Of the majority said: "The faith of citizen is that political wisdom and virtue will sustain themselves in the free market of ideas, so long as the channels of communication are left open. The faith in the popular government rests on the old dictum let the people have the truth and the freedom to discuss it and will go well". The liberty of the press remains'Ark of the Covenant' newspapers give the people the freedom to find out what ideas are correct".

The matter can be looked at from another angle. In the very same case, Mathew, J. observed: "The constitutional guarantee of the freedom of speech is not so much for the benefit of the press as it is for the benefit of the public. The freedom of speech includes within its compass, the right of all citizens to read and be informed".

In Time v. Hill the U.S. Supreme Court said: "The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people". In Griswold V. Connecticut, the U.S. Supreme Court was of the opinion that the right of

freedom of speech and press includes not only the right to utter or to print, but the right to read.

Bhagwati, J. in Naraindas v. State of Madhya Pradesh while dealing with the power of the State to select text-books for obligatory use by students, said: "It is our firm belief, nay, a conviction which constitutes one of the basic values of a free society to which we are needed under our Constitution, that there must be freedom not only for the thought that we cherish, but also for the thought that we hate.... There must be freedom of thought and the mind must be ready to receive new ideas, to critically analyse and examine them and to accept those which are found to stand the test of scrutiny and to reject the rest".

In Sakal Papers (P) Ltd. v Union of India Mudhoikar, J. said "This Court must be even vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved."

In Reliance Petro Chemicals Ltd., v. Proprietors of Indian Express, Newspapers (Bombay) Pvt. Ltd., Supreme Court reviewed the relevant Indian-American English case Law on Right to Know Act and observed: The law on this aspect has been adverted to in the decision of this court in Indian Express Newspapers (Bombay) Pvt. Ltd., v. Union of India, wherein Justice Venkataramaiah referred to the importance of freedom of press in a democratic society and the role of courts. Though the Indian constitution does not use the expression, freedom of press in Article 19, but it is included as one of the guarantees in Article 19 (1) (a).The freedom of press as noted by Venkataramaiah, J is one of the items around which the greatest and the bitterest of constitutional struggle have been waged in all countries where liberal constitutions prevail.

The right to acquire and disseminate information through the electronic media has been considered by the Supreme Court in the Secretary, Ministry of Information and Broadcasting v. Cricket Association, Bengal. The Supreme Court has considered the significant question of freedom of telecasting vis-a-vis Article 19(l)(a), In this case, the right of the Cricket Association to telecast the cricket match came up for consideration before the Supreme Court.

Telecasting is a system of communication either audio or visual or both. Organization of an event in India is an aspect of the freedom of speech and expression protected by Article 19(l) (a) and reasonable restrictions that can be imposed thereon under Article 19 (2). It therefore, follows that the organization, production and recording of an event cannot be prevented except by a law permitted by Article 19 (2).

Unlike the print media, there are certain built-in limitations on the use of electronic media, viz:

(i) The airwaves or frequencies are a public property and they have to be used for the benefit of the society at large:

(ii) The frequencies are limited:

(iii) The airwaves are owned or controlled by the government or a central national authority;

(iv) They are not available on account of the scarcity, costs and competition.

Broadcasting is a means of communication, and, therefore, a medium of speech and expression. Hence, in a democratic society, neither any private body nor any governmental organization can claim any monopoly over it. The Indian Constitution also forbids monopoly either in the print or electronic media. The Constitution only permits state monopoly in respect of a trade or business. The government can however claim regulatory power over broadcasting so as to utilize the public resources in the form of the limited frequencies available for the benefit of the society at large and to prevent concentration of the frequencies in the hands of the rich few who can then monopolies the dissemination of views and information to suit their interests. In democratic countries, this regulatory function is discharged by an independent autonomous broadcasting authority which is representative of all sections of the society and is free from state control.

The Supreme Court has also emphasized in the instant case that freedom of speech and expression involves not merely freedom to communicate information and ideas without interference but also the freedom to receive the same. The right to freedom of speech and expression includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The right to telecast a sporting event therefore includes the right to educate and inform the present and the prospective sportsmen interested in the particular game and also to inform and entertain the lovers of the game. The right to information and right to acquire knowledge about the game of cricket through electronic media is a right guaranteed under Article 19(1) (a).

The Board of Cricket Control or the Cricket Association functions on the basis of 'no profit no loss' Their main aim is to promote the game of cricket. Therefore, telecast by such a body of a cricket match can hardly be regarded as a commercial activity. Because of its educational and entertainment values, this activity falls more appropriately under Article 19(1) (a). It can thus be seen that the Supreme Court has interpreted Article 19(1) (a) broadly so as to bring broadcasting and telecasting within its coverage. Also, the Court has taken a very significant step by way of freeing these activities from governmental monopolistic control. Also, the function of regulating airwaves will henceforth be performed by an autonomous body rather than the government itself.

Keeping the constitutional requirements of the Indian law in the background, it would be appropriate to refer to certain American decisions. It is pertinent to mention the observations of Justice Black in

the case of Harry Bridges v. State of California Justice Black observed that free speech and fair trial are the other two most cherished values of our civilisation and it would be a trying task and if we may say so, a difficult one to choose between them. But in case of need a choice has to be made as emphasised that a public utterance or publication is not to be denied the constitutional protective of freedom of speech and press, merely because, it concerns a judicial proceeding still pending in the courts upon the theory that in such a case it must necessarily tend to obstruct the orderly and fair administration of justice. In America, this right is absolute in view of the terms of the First Amendment unlike the conditional right of freedom of speech under Article 19 (1) (a) of our Constitution.

Justice Black quoted from the observation of Justice Homes in Abrams v. United States where the latter had observed that to justify suppression of free speech there must be a reasonable ground to fear that serious evil will result, if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent.This question again cropped up in John D. Pennekamp v. State of Florida and Justice Frankfurter reiterated that the clear and present danger conception was never used by Mr. Justice Holmes to express a technical legal doctrine or to convey a formula for adjudicating cases.

As pointed out by Mathew, J, in Bennett Coleman v. Union of India, the basic premise is that the people are both governors and the governed. In order that governed may form intelligent and wise judgment it is necessary that they must be apprised of all the aspects of a question on which a decision has to be taken so that they might arrive at truth. If democracy means a government of the people, by the people and for the people, it is obvious that every citizen must be entitled to participate in the democratic process.

The vital question of freedom of access to means of information came up before the Supreme Court in Prabha Dutt v. Union of India. Wherein the Supreme Court observed that the right of freedom of speech and expression under Article 19(1)(a) of the Constitution was not an absolute right nor it "confers rights on the press to have unrestricted access to means of information". This observation of the Court implies that the Article 19(1) (a) the press to have an access to means of information although it is not 'unrestricted'. According to the court, there is no right of information through the media to an interviewer is willing to be interviewed. The court which proceeded on the basis that the prisoners were willing to be interviewed found no 'reason as to why "newspaper men who can broadly, and without great fear of contradiction be termed as friends of the society" be denied "the right of interviews".

In a democracy, freedom of expression is indispensable as all men are entitled to participate in the process of formulation of common decisions. Indeed, freedom of expression is the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving secure and protection to other liberties. It has been truly said that it is the mother of all other

liberties. The Press as a medium of communication is a modem phenomenon. It has immense power to advance or thwart the progress of civilization. It is about universal catastrophe.

Check your progress exercise 2:

Q1) Explain the **Right to Information as a Freedom of Speech and Expression**?

_____

_____

_____

_____

_____

2A.5 RIGHT TO INFORMATION AND IMPOSITION OF REASONABLE RESTRICTIONS

The right to information being integral part of the right to freedom of speech is subject to restrictions that can be imposed upon that right under Article 19(2). In Prabhu Dutt v. Union of India, the jail authorities had rejected the permission to newspaper representative to interview the convicts. The Supreme Court held that the right to information of a journalist did not give her an unrestricted access to information. Further, the interview could be permitted subject to the provisions of the jail manual. The court further held that the right to Article 19 (2) states that nothing in Sub Clause (a) of Clause (1) shall effect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relation with foreign states, public order, decency or morality or in relation to contempt of the court, defamation or incitement to an offence. Know news and information regarding administration of the government is included in the freedom of press. But this right is not absolute and restrictions can be imposed on it in the interest of society and the individual from which the press obtains the information. They can obtain information from an individual when he voluntarily agrees to give such information. In the instant case the court directed the superintendent of the Tihar Jail to permit the Chief Reporter of the Hindustan Times Newspaper to interview. Ranga and Billa, the two death sentence convicts under Article 19 (1) (a) as they were willing to be interviewed.

In Sheela Barse v Union of lndia a letter written by a freelance journalist, Sheela Barse, complaining against the withdrawal of permission to interview the prisoners given earlier by the authorities was treated as a writ petition. The Supreme Court had in previous decisions humanized the conditions in prison but the assessment of how far those conditions were actually fulfilled could be made only, if the prisoners were given freedom

to speak to the journalists. Interviews with the prisoners were an important source of knowing how far those conditions had been observed. The Court conceded that right but said that such a right was subject to the provisions of the Jail Manual. The provisions of the Jail Manual would have to stand the test of reasonableness under Article 19 (2) and also under Article 21. According to the court, most of the manuals provide restrictions which are reasonable. It was held that tape recording should be subject to special permission of the appropriate authority.

In Dinesh Trivedi v Union of India, the Court reiterated the limitations of the Right to Information In this context, the following observation of the Supreme Court is noteworthy.

"In modem constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute".

It may be possible for the Executive to impose reasonable restrictions and in examining the reasonableness of these restrictions one must keep in mind what was said by the Supreme Court of India in the case of M.R.F. Ltd. v. Inspector Kerala Government? It was observed that in determining reasonableness one has to keep in mind the directive principles of state policy; restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public; in order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down which may have universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the constitution, prevailing conditions and the surrounding circumstances; a just balance has to be struck between the restrictions impose and the social control, prevailing social values as also social needs which are intended to be satisfied by the restrictions and there must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption is in favour of the constitutionality of the Act will naturally arise.

Again in People's Union for Civil Liberties v. Union of lndia, it reiterated by the court that the right to information is subjected to reasonable restrictions. When information was sought regarding safety violations and defects in various nuclear installations and access was sought to power plants, it was denied on the ground that this would affect the interest of security of the state. The provisions of Atomic Energy Act, 1962 were under consideration. It was said that information which has been classified as "secret" cannot be made available. Hence, the Supreme Court stated that right to speech and publish does not carry with it an unrestricted right to gather information. A reasonable restriction on the exercise of the right to know is always permissible in the interest of the security of the State.

Right to fly the national flag freely with respect and dignity is a fundamental right of a citizen within the meaning of Article 19(1)(a) of the Constitution of India being an expression and manifestation of his allegiance and feelings and sentiments of pride for the nation; The fundamental right to fly national flag is not absolute right but a qualified one being subject to reasonable restrictions under clause 2 of Article 19 of the Constitution of India.' Every right is coupled with a duty, Part-Ill of the Constitution of India although confers rights, duties and regulations are inherent there under. Such reasonable regulations have been found to be contained in the provisions of Part-Ill of the Constitution of India, apart from clauses 2 to 4 and 6 of Article 19 of the Constitution of India.

Check your progress exercise 3:

Q1) Explain the **Right to Information means Imposition of Reasonable Restrictions?**

_____

_____

_____

_____

_____

2A.6 RIGHT TO INFORMATION AND RIGHT TO LIFE

Article 21 of the Constitution enshrines right to life and personal liberty. The expressions "right to life and personal liberty" are compendious terms, which include within themselves a variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time.

Freedom of information is a part of right to life as envisaged under Article 21 of the constitution. In R.P. Limited v, Indian Express Newspaper, the court observed that people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is basic, which citizens of a free country aspire, in the broad horizon of the right to life under Article 21 of the Constitution. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards global perspective in various fields including human rights, the expression, 'liberty' must receive an expanded meaning. The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and

nurturing that opinion it becomes necessary to receive information. Article 21 confers on all persons, a right to know which include, a right to receive information. The ambit and scope of Article 21 is much wider as

compared to Art. 19(1) (a). Thus, the courts were required to expand its scope by way of judicial activism.

In Peoples Union for Civil Liberties v Union of India, the Supreme Court observed that Fundamental Rights themselves have no fixed contents; most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the court should be to expand the reach and ambit of the Fundamental Rights by the process of judicial interpretation. There cannot be any distinction between the Fundamental Rights mentioned in Chapter-Ill of the Constitution and the declaration of such rights on the basis of the judgments rendered by the Supreme Court. In K. Ravi Kumar v.Bangalore University, the apex court held that the public authorities cannot deny flatly any document on the ground of confidentiality.

In Reliance Petrochemicals Ltd. v. Indian Express Newspapers, Bombay (P) Ltd. 'Justice Mukharji recognized the right to know as emanating from the right to life. The question which arose was whether Reliance Petrochemicals Ltd. was entitled to an injunction against Indian Express which had published an article questioning the reliability of the farmer's debenture issue. The learned Judge observed: "We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age on our land under Article 21 of our Construction. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform."

A recent case in India, infamously known as the Mysore sex scandal case raised interesting questions on different facets of the right to know. Leading newspapers published reports about how three Judges of the Karnataka High Court had been found indulging in immoral behaviour at a private resort in Mysore. The High Court responded by issuing to the editors and publishers, notice for contempt of court. The Court's demand to know the journalists' sources of information was staunchly resisted by the press on the grounds of journalistic privilege. While there was something to be said in favour of confidentiality of sources, there was also much to be said against news reports which cast aspersions of such a serious nature without a shred of supporting material.

In the meantime, a committee comprising of senior judges appointed by the Chief Justice of India, carried out an "in-house investigation" and absolved the judges concerned who have since continued in judicial office. There was a strong demand for the contents of the report to be made public. In Indira Jaising v. Registrar General, Supreme Court of India, a senior advocate practicing in the Supreme Court, filed a petition demanding the publication of the inquiry report. The Court declined disclosure with a reasoning that it is difficult to reconcile with its own bold pronouncements in the past: "A report made on such inquiry, if given

publicity will only lead to more harm than good to the institution as judges would prefer to face inquiry leading to impeachment.

In such a case, the only course open to the parties concerned, if they have material is to invoke the provisions of Article 124 or Article 217 of the Constitution, as the case may be." The said report is only for the purpose of satisfaction of the Chief Justice of India that such a report has been made. It is purely preliminary in nature, ad hoc and not final ... the only source or authority by which the Chief Justice can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made the subject-matter of a writ petition to disclose a report made to him."

It is submitted in this context that Surely, the public has a right to know about the integrity of those who dispense justice. That the Supreme Court had instituted an inquiry into the incident was a fact allowed to be widely publicised. This was a measure that inspired public confidence and was intended to do so. It was therefore, in the fitness of things that the report itself be made public. Quite apart from the public interest was in the interest of the judges concerned to have the report made public; the more so if it established their innocence.

There is a case of Mr X v Hospital Z decided by the Supreme Court regarding right to information and venereal or infectious diseases. The welfare of the society is the primary duty of every civilized state. Sections 269 to 271 of the Indian Penal Code, 1860 make an act, which is likely to spread infection, punishable by considering it as an offence. These sections are framed in order to prevent people from doing acts, which are likely to spread infectious diseases. Thus a person suffering from an infectious disease is under an obligation to disclose the same to the other person and if he fails to do so, he will be liable to be prosecuted under these sections. As a corollary, the other person has a right to know about such infectious disease. In this case, the Supreme Court held that it was open to the hospital authorities or the doctor concerned to reveal such information to the persons related to the girl whom he intended to marry and she had a right to know about the HIV Positive status of the appellant. A question may, however, be raised that if the person suffering from HIV Positive marries with a willing partner after disclosing the factum of disease to that partner, will he still commit an offence within the meaning of Sections 269 and 270 of LP.C. It is submitted that there should be no bar for such a marriage if the healthy spouse consents to marry, despite of being aware of the fact that the other spouse is suffering from the said disease. The courts should not interfere with the choice of two consenting adults who are willing to marry each other with full knowledge about the disease.

It must be noted that in Mr. X v Hospital Z a three judge bench of the Supreme Court held that once the division bench of the Supreme Court held that the disclosure of HIV Positive status was justified as the girl has a right to know, there was no need for this court to go further and declare

in general as to what rights and obligations arise in such context as to right to privacy or whether such persons are entitled to marry or not or in the event such persons marry they would commit an offence under the law or whether such right is suspended during the period of illness. Therefore, all those observations made by the court in the aforesaid matter were unnecessary. Thus, the court held that the observations made by this court, except to the extent of holding that the appellant's right was not affected in any manner by revealing his HIV Positive status to the relatives of his fiancée, are uncalled for. It seems that the court has realized the un - tenability of the earlier observations and the practical difficulties, which may arise after the disclosure of HIV status.

From the observations made by the judiciary in India more particularly the Supreme Court of India as mentioned above, it becomes clear that the courts in India have declared emphatically that right to information is a fundamental right. The Supreme Court pointed out that several un enumerated rights fall within the ambit of Article 21 since personal liberty is of widest amplitude. Right to Information is one among them. These observations help in understanding the scope, importance and limits of the right to information apart from the prevailing position. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy.

Check your progress exercise 4:

Q1) Explain the **Right to Information and Right to Life?**

_____

_____

_____

_____

_____

2A.7 RIGHT TO INFORMATION AND RIGHT TO PRIVACY

The right to privacy means the right to be left along and the right of a person to be free from unwarranted publicity. Black's Law Dictionary says that the term right to privacy is a generic term encompassing various rights recognised to be inherent in the concept of ordered liberty and such right prevents government interference in intimate personal relationship or activities, freedom of individual to make fundamental choices involving himself, his family and his relationship with others. Hence, in the name of right to information, a person's privacy cannot be invaded and following is a brief account on what a right to privacy means and its contents.

In 1955, the American Law Institute Model Penal Code stated that every individual is entitled to protection against state interference in his personal affairs where he is not harming others. The Wolfenden Committee stated

that, "it is not the function of Criminal Law to intervene in the lives of citizens or to seek or to enforce any particular pattern of behaviour, they must remain a realm of private morality and immorality which is in brief and crude terms not the laws business. In America, Griswoldv, Connecticut, in 1965, the U.S. Supreme Court recognised privacy of the freedom of married couples.

The question also came up in Europe in recent times. The European Court of Human Rights had an occasion to deal with this aspect. In Jeffrey Dudgeon v. Northern Ireland the facts were that Jeffrey Dudgeon, 35 years old and homosexual since the age of 14 years in Belfast, Northern Ireland was made a victim of search of his house and interrogation about sexual life. His personal papers were seized and his life partner was sent by police to the Director of Prosecutions with a view to institute proceedings for gross indecency. However in 1977, one year later he was informed that charges were not being pressed and his papers were released. Mr. Dudgeon petitioner went to the European court alleging violation of Article 8 of the European Constitution of Human Rights corresponding to2 of the Universal Declaration of Human Rights, wherein the court held that the legislation, under which the police acted, interfered with petitioner's right to respect for his private life.

In many decided cases, the Supreme Court has included the right to privacy in the right to life under Article 21. It is therefore proposed by the Commission to Review the Working of the Constitution that a new article, namely Article 21-B should be inserted on the following lines 'every person has a right to respect for his private and family life his home and his correspondence.

Kharak Singh v. State of U.P., is an important decision by the Supreme Court of India on right to privacy. Justice Koka Subba Rao who gave his minority opinion in the judgment made the following The report of the National Commission to Review the Working of the Constitution under the Chairmanship of Justice Shri M.N. Venkata ChaUiah, former Chief Justice of India, dated March, 31 2002 submitted to Government of India also recommended that the right to privacy be made a fundamental right. Observation on life and personal liberty under Article 21 of the constitution which are quite relevant for understanding the origin of right to privacy in India. The expression "life" used in that article cannot be confined only to the taking away of life i, e., causing death.

Field J., defined 'Life' in the following words: "Life is something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation or the putting out an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world."

In T. Sareetha v. T. Venkata Subbaiah Justice P, A. Choudary of A.P. High Court had struck down the validity of Section 9 of the Hindu Marriage Act, 1955, providing for the matrimonial remedy of restitution of

conjugal rights on the ground that it violates the right to privacy of a spouse unwilling to cohabit with the other spouse, as the same is implicit under Article 21 of the Constitution. No doubt, the validity of Section 9 of the Act of 1955 has been upheld in a subsequent case by the Supreme Court but the observations of the learned Justice P.A. Chowdary are still relevant, as regards the right to privacy, which are extracted here for ready reference.

Article 21 protects the right to privacy and promotes the individual dignity mentioned in the preamble to our Constitution. Govind v. State of M.P. also lays down that the courts should protect and uphold those important constitutional rights except where the claims of those rights for protection are required to be subordinate to superior State interests.

In State of Maharashtra v Madhukar Narayan, the Supreme Court speaking through Justice A.M. Ahmadi declared that even a woman of easy virtues is entitled to privacy and that it cannot be invaded by any person while making the following relevant observations. The High Court observed in the instant case that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a government official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person. She was honest enough to admit the dark side of her life and even a woman of easy virtue is entitled to privacy and no one can invade her privacy and also it is not open to any and every person to violate her person as and when she is entitled to protect her person and she is equally entitled for protection by law.

In R. Rajagopal v State of Tamil Nadu, popularly known as Auto Shankar case, the Supreme Court had an occasion to comment on the nature of right to privacy in India. Justice B.P. Jeevan Reddy made the following observations which are self-explanatory. "The right to privacy is an independent and distinctive concept of action for damage resulting from unlawful invasion of privacy and recognised right has two aspects which are but two faces of the same coin. The general law of privacy affords a tort action for damages resulting from an unlawful invasion of privacy and the constitution had recognised the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where for example, a person's name or likeness is used without his consent for advertising - or non-advertising purpose or for that matter his life story is written - whether mandatory or otherwise and published without his consent as explained here after in recent times. However, this right has acquired a constitutional status".

In People's Union for Civil Liberties v. Union of India, popularly known as the Telephone Tapping case, the Supreme Court speaking through Justice Kuldip Singh made the following observations on right to privacy. "The right to privacy, by itself has not been identified under the Constitution. As a concept, it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed

in a given case, would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modem man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life.... Right to privacy would certainly include telephone tapping which would, thus, attract Art. 21 of the Constitution of India, unless it is tested under the procedure established by law."

The Supreme Court in a case involving disclosure of medical information envisaged a clash between person's "right to be alone" and another person's right to be informed, in Dr. Tokugha Yepthomi v. Apollo Hospital Enterprises Ltd. While holding that the disclosures by the hospital concerned (Respondents) that a patient (Appellant) was HIV Positive would not be violative of either the rule of "confidentiality or the appellant's right to privacy" observed. "Doctors are morally and ethically bound to maintain confidentiality. In such a situation, public disclosure of even true facts may amount to an invasion of the right to privacy which may sometimes lead to the clash of person's right to be let alone with another person's right to be informed."

In India, even though the right to privacy is not specifically guaranteed as a fundamental right, it has been interpreted in the above mentioned cases that it is part and parcel of the right to life and personal liberty. The Court have held in many occasions that Right to information does not mean right to intrude privacy of any individual.

Check your progress exercise 5:

Q1) Explain the **Right to Information and Right to** privacy**?**

_____

_____

_____

_____

_____

2A.8 RIGHT TO INFORMATION AND PRINCIPLES OF NATURAL JUSTICE

Natural Justice is rooted in the natural sense of what is right and wrong. It mandates the adjudicator or the administrator, as the case may be, to observe procedural fairness and propriety in holding/conducting trial, inquiry or investigation or other types of proceedings or process. The object of natural justice is to secure justice by ensuring procedural

fairness. It is intended to serve the ends of justice and to prevent miscarriage of justice. This principle emphasises that persons entrusted with the task of administering justice should conduct themselves in such a way so that they may inspire the confidence of the contending parties and raise their image above all shadow of suspicion. No person should be condemned unheard is one of principles of natural justice. Hence by hearing, one receives information required for a decision. Hence information plays a vital role. Fair play will thus be an essential ingredient of any decision taken.

In the field of enforcement of laws, it was stated as early as in Harla v. State of Rajasthan, by eminent Justice Vivian Bose that "natural Justice requires that before a law can become operative it must be published".

Again, in B.K. Srinivasan v. State of Karnataka, it was held that where a law demands compliance, those that are governed must be notified directly and reliability of the law and all changes and additions made by various process. Delegated or subordinate legislation is all pervasive But unlike parliamentary legislation which is publicly made; delegated legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is therefore necessary that subordinate legislation, in order to take effect, must be published in some suitable manner, whether such publication is prescribed by the parent statute or not. As observed by Justice Bharucha in Pradesh Pong Bandh Visthapit Samiti v. Union of India the court directed that notices to be published in the local language in newspapers having wide circulation in the areas where the persons concerned resided.

Crores of rupees are spent every year by the Central and State Governments on publication, in the newspapers, of huge advertisements on inauguration or the foundation laying ceremonies carrying photographs of ministers and governors and so on. With the same money, all important rules and regulations and orders can be made and they can be published in the media for general information.

In order to ensure the confidence of the public in the fair administration of justice, it is required that courts should be open. This is of course subject to the normal exceptions such as the requirements of the maintenance of order and decorum in the court room, the preservation of official or trade secrets, the protection of women and children in matter affecting their privacy or modesty.

Judges of the Supreme Court and the High Court’s often make tentative observations during the hearing of cases. Sometimes judges complain that press reporters, either through insufficient understanding or for sensationalizing a remark, distort their observations or quote them out of context. It is for consideration whether selected hearings in important cases could not be televised. After all parliamentary proceedings too were not allowed to be photographed until a few years ago, but now they have related the right of this rule by allowing live telecasts of the Finance

Minister's budget speech, debates on motions of confidence and no confidence and the question hour.

The institution of the Question Hour in legislatures is itself a part of the ancient right to information. It throws open to public gaze many hidden areas of governmental activities. And supplementary ensure that the minister who answers the questions can be subjected to effective cross-examination on the information supplied or suppressed by him.

In Life Insurance Corporation of India v. Manuhhai D. Shah the Supreme Court speaking through Justice A, M. Ahmadi (as he then was) observed that LIC must function in the best interest of the community and the community is thus entitled to know as to whether LIC is functioning as per statute or not. According to Soli J. Sorabjee, senior advocate of Supreme Court, this judgment has given a 'firm constitutional basis' to the right to know.

The Supreme Court in another case has reiterated that there has to be an active and intelligent participation of the people in all spheres and affairs of the community in a democratic set up, so that they are capable of forming a broad opinion about the way in which they were being man, aged, tackled and administered by the government and its functionaries. This again underscores the importance of right to information as a fundamental right.

The Bombay High Court in S, K. Kanitkar v. Bhiwandi Nizampura Municipal Council while hearing a petition under Article 226 of the Constitution, seeking appropriate directions for getting certified copies of the building planner commencement certificate etc. followed the observation made by Justice Sabyasachi Mukherji that "people at large have a right to know" and ruled that the petitioner had a right to inspect the documents and to take certified copies of building plan of the illegal and unauthorized construction in the Bhiwandi Nizampura Municipal town.

Check your progress exercise 6:

Q1) Explain **Right to Information as a Principles of Natural Justice ?**

_____

_____

_____

_____

_____

2A.9 RIGHT TO INFORMATION AND PUBLIC INTEREST LITIGATION

Public interest means interest shared by citizens generally in the affairs of state or government. It signifies an act beneficial to general public and an

action necessarily taken for public purpose. It is a 'strategic arm' of the legal aid movement and is intended to bring justice within the reach of the poor masses. It is a device to provide justice to those who individually are not in a position to have access to the courts.

The growth of Public Interest Litigation (PIL) in the recent times and the expansion of this field by the courts is definitely a welcoming feature though there is some criticism from certain quarters that this field is being misutilised by unscrupulous elements of the society and the courts also under the garb of judicial activism or under review. There cannot be a general statement of this nature which may be the view of traditional professionals and conservative section of the society. In several cases, the Courts while exercising power of judicial review issued appropriate AIR 2000 Bombay 453 directions, in the interest of the public. In a democratic set up, this field is definitely essential in the interest of the society at large.

Democracy is based on the sovereignty of the people. Good Government is yet another fundamental principle of this concept. If the democratic institutions are not run on the healthy lines, in all aspects the very purpose and object of concept of democracy will be at peril and virtually it will be defeated. For this purpose, a citizen must have a right to have access to the information relating to governance. It will definitely promote transparency in administration and in a way there can be a constant vigil and check on administration, so as to make it accountable to the people and by the people. On the scope and ambit of public interest litigation, Mahatma Gandhi said: "The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused."

In the Indian context, and especially in the context of the Right to Information Act, 2005, a significant observation of the Supreme Court of India can be taken note of in understanding the term "public interest".

In L.K. Koolwal v. State of Rajasthan, the Rajasthan High Court while considering the public interest petition by a citizen seeking protection against the neglect of sanitation by the State which led to pollution hazards held that the citizen has right to know about the activities of the state, the instrumentalities, the departments and the agencies of the state. The privilege of secrecy, which existed in the earlier times that the state is not bound to disclose the facts to the citizens or the state cannot be compelled by the citizens to disclose the facts, does not survive now to a great extent guaranteed under Article 19 (1) (a) of the Indian Constitution of the freedom or right to know.^^ In this case, the Supreme Court gave a clear cut directives that freedom of speech and expression provided under Article 19 (1) (a) of the Constitution clearly implies right to information, as without information the freedom of speech and expression cannot be fully enjoyed by the citizens.

In 'S. P. Gupta v President of India Justice Bhagwati, in referring to 'public interest'; maintained: 'Redressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and interests vindicate

public interest... (in the enforcement of which) the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected".

The concept of public interest litigation has been playing an important role in making the right to information a reality. The Supreme Court in many cases issued certain directions and made certain important observations with regard to the right to information. Certain voluntary organizations, like Centre for Public Interest Litigation and Common Cause, MKSS and Consumer Education and Research Council have been in the forefront or very active in making the right to information a reality and meaningful one.

The best example of use of PIL in enforcing the right to information, was decided recently in the case of electoral reforms. The Supreme Court explained the voter's right to know about the candidates contesting elections in the leading case of Union of India v. Association for Democratic Reforms.

In State of U.P. v. Raj Narain which involved the question of government privilege under Section 123 of the Evidence Act, the Supreme Court observed:

"In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

In S.P Gupta v. Union of India, popularly known as Judges Transfer case, a seven-Judge Bench of the Supreme Court followed Raj Narain case and observed thus:

"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 citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy. 'Knowledge' said

James Madison, "will forever govern ignorance and people who mean to be their own governors must arm themselves with the power knowledge gives, A popular government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both". The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world."

In M.C. Mehta v. Union of India, the Supreme Court pointed out that "We are in a democratic polity where dissemination of information is foundation of the system, keeping the citizens informed is an obligation of the government. However, the Madhya Pradesh High Court ruled that national interest and State security is above the right of information. In the instant case it did not allow public interest litigation claiming the right to information in relation to Kargil infiltration.

The Law Commission of India's 179 Report in 2001 emphasised the necessity of the whistleblowing. It also recommended for an Act through a proposed bill on "Public Interest Disclosure and Protection of Informers". The Supreme Court in the case of Vineet Narain V. Union of India, which is based on the Public Interest Litigation and Judiciary enforcing rule of law, held that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and therefore, the office held by them is trust for the people. Any deviation from the path of rectitude by any of them amounts to breach of trust and must be severely deah with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be presented expeditiously so that the majority of law is upheld and the rule of law is vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore to guard against erosion of the rule of law.

The role model for governance and decisions taken by the authorities should manifest fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base its actions on transparency, but must create an impression that the decision making process was motivated on the consideration of probity. The authorities have to rise above the nexus of vested interest and nepotism. They have to eschew window dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. The principle of governance has to be tested on the touch stone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, then that decision cannot be allowed to operate. After making these observations, the Supreme Court of India in the case of Onkar Lai Bajaj v. Union of India, observed that the public in general has a right to know the circumstances under which their elected representatives got certain benefits. This was a case where challenge was made to the grant of outlets, dealerships and distributorships of petroleum products.

In State of Gujarat v Mirzapur Moti Kureshi Kasab Jamat and Others the apex court held "the interest of general public (public interest) is of a wide import covering public order, public health, public security, morals, economic welfare of the community, and the objects mentioned in Part- IV of the Constitution i.e. Directive Principles of State Policy ".

One of the decisions of the Central Information Commission also throws some light on this term. Public interest includes "disclosure of information that leads towards greater transparency arid accountability" in the working of a public authority. Right to information gives power to the people. People with information can protect themselves against an unfair decision prevent injustice and bring about change. If one knows the facts, he can have his voice and argue his case effectively. People without information do not have these advantages and are powerless against the State. Access to judiciary through PIL and decisions of courts on it are really helping in effective implementation of right to information.

Check your progress exercise 7:

Q1) Explain **Public Interest Litigation For protect Right to Information?**

_____

_____

_____

_____

_____

2A.10 RIGHT TO INFORMATION AND THE RIGHTS OF THE ARRESTED PERSON

Most of the violations of life or personal liberty are being reported at the hands of law enforcing agencies, in particular, the police personnel. Chapter - V of Code of Criminal Procedure deals with the arrest of individuals. A police officer under Section 41 Cr. P.C. can arrest a person without warrant in a cognizable offence and in certain other circumstances. Also the arrested accused person has the right not to be tortured by the police while he is in the custody. If the police is found to have violated these basic rights, the Constitutional courts may extend the relief in view of Article 21 of the Constitution. The arrested person should be produced before the competent magistrate within 24 hours of his arrest.

In Joginder Kumar v. State of U.P, the Supreme Court has laid down guidelines governing arrest of a person during investigation. This has been done with a view to strike a balance between the need of the police on the one hand and the protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies.

Following are the guidelines laid down by the Court:

a) An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to have an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained,

b) Police officer shall inform the arrested person of this right when he is brought to the police station

c) An entry shall be required to be made in the dairy as to who was informed of the arrest.

The protection of power flows from Article 21 and Article 22 of the Constitution and therefore they must be enforced strictly.

D.K. Basu V. State of West Bengal is a very recent and important case on the rights of arrested person. The matter was brought Section 51 Cr. P.C. says that person arrested not to be detained for more than twenty four hours before the Supreme Court by Dr, D.K. Basu, Executive Chairman of the Legal Aid Services, a non-political organization, West Bengal through a public interest litigation. He addressed a letter to the Chief Justice drawing his attention to certain news items published in the Telegraph and Statesman and Indian Express newspaper regarding, deaths in police lock ups and custody. This letter was treated as a writ petition by the Court. The Supreme Court has laid down eleven guidelines on the rights of arrested person, Justice A.S. Anand who delivered the judgment on behalf of the Division Bench of the Supreme Court incorporated a few basic rights that encompass the right to information. The Court observed:

"Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit the use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation effective by torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it."

Most of the directions of the Supreme Court translate into the right of accused or his kin to have access to information regarding his arrest and detention such as preparation of a memo of arrest to be counter-signed by the arrestee and a relative or neighbor, preparation of a report of the physical condition of the arrestee, recording of the place of detention in appropriate registers at the police station, display of details of detained persons at a prominent place at the police station and at the district headquarters, etc.

Check your progress exercise 8:

Q.1) Explain the **Right to Information is the Right of the Arrested Person**

_____

_____

_____

_____

_____

2A.11 CONCLUSION

The court also mentioned that in addition to the statutory and constitutional requirements to which a reference was made would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. The requirements mentioned in D.K. Basu case are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by courts from time to time in connection with the safeguarding of the right and dignity of the arrestee. The Court directed that these directions shall be widely circulated amongst the concerned authorities and personnel, and should be broadcasted on the All India Radio and Doordarshan.

2A.12 REFERENCES

- Bennett Coleman v. Union of India, AIR 1973 SC 60; State of U.P. v. Raj Naraian (1975).
- SCC 428 and Secretary, Ministry of Information and Broadcasting V. Cricket Association of Bengal, AIR 1995 SC 1236.
- Indian Express News Paper v. Union of India, AIR 1986 SC 515 and Reliance Petro-Chemicals Ltd. v. Indian Express News Papers (Bombay) Pvt. Ltd., AIR 1989 SC 190.
- John D. Pennekamp v. State of 1941-86 Law Ed 1942, AIR 1961 SC 609.
- Union of India v. Naveen Jindal, AIR 2004 SC 1559: (2004) 2 SCC 510.
- European Court of Human Rights, Series A, Vol. 45.
- The right to privacy be made a fundamental right, AIR 1963 SC 1294: (1964) 1 SCR 332. Sareetha v. T. Venkata Subbaiah Justice P, A. Choudary of A.P. High Court had struck down the validity of Section 9 of the Hindu Marriage Act, 1955.
- AIR 1997 SC568. Also see X. v. Hospital Z, (1988) 8 SCO 296,205.

- Delhi Law Review, 1999, p 78. Also see X. v Hospital Z, (1988) 8 SCC296, 206.
- Delhi Law Review. 2000, p77. AIR 1982 SC 149 Cases like, Secretary, Ministry of Information and Broad Casting v. Cricket Association of Bengal, AIR 1995 SCI 236 and recently in 2002.
- Union of IndiaV. Association for Democratic Reforms, AIR 2002 SC 2112 and Peoples Union for Civil Liberties v. Union of India and others, (2003) 4 SCC 399 are worth noting in this regard.

2B) Initiatives and Movements: MKSS, NCPRI, CHRI, Anna Hazare and others

Unit Structure

2B.1 OBJECTIVES

- To understand the movement Mazdoor Kissan Shakti Sangthan (MKSS),
- To study the National Campaign for People's Right to Information **(NCPRI)**
- To learn the **Commonwealth Human Rights Initiative** (**CHRI)**
- To understand the Movement of **Anna Hazare'**

2B.2 INTRODUCTION

Movement for Transparency The Right to information has not come on a platter and there have been many activists and citizens' groups whose continuous struggle and efforts and movements have brought about this change. A mass based organization, called the Mazdoor Kissan Shakti Sangthan (MKSS), movement led by Aruna Roy, in May 1990 took an initiative to organize people, in a very backward region of Rajasthan: Bhim Tehsil, to assert their Right to Information by asking for copies of bills and vouchers and names of persons who have been paid wages mentioned in muster-rolls on the construction of school, dispensaries, small dams and community centres. It spread quickly to other areas of Rajasthan and to other States. The attempts of Harsh Mandar the then

Divisional Commissioner of Bilaspur, Madhya Pradesh in 1996 to throw open the registers of Employment Exchanges and the records of Public Distribution System to the citizens or the agitation led by Anna Hazare in Maharashtra in 2001 are some the examples. Consequently the National Campaign for People's Right to Information (NCPRI) which became a broad-based platform for action was formed in the late-1990s. As the campaign gathered momentum, it became clear that the Right to Information has to be made legally enforceable.

2B.3 THE GRASSROOTS STRUGGLES IN RAJASTHAN: MAZDOOR KISAN SHAKTI SANGATHAN (MKSS)

The most important feature that distinguishes the movement for the people's right to information in India from that in most other countries, whether of the North or the South, is that it is deeply rooted in the struggles and concerns for survival and justice of most disadvantaged rural people. The reason for this special character to the entire movement is that it was inspired by a highly courageous, resolute, and ethically consistent grassroots struggle related to the most fundamental livelihood and justice concerns of the rural poor. This inspiring struggle in the large desert state of Rajasthan was led by the Mazdoor Kisan Shakti Sangathan (MKSS), as part of a people's movement for justice in wages, livelihoods and land.In this topic, we will recount in some detail the story of the MKSS, because it would enable a deeper understanding of why the movement for the people's right to information in India has developed as part of a larger movement for people's empowerment and justice.

a) History of the MKSS

It was 35 years ago, in the summer of 1987, that the three founding activists of MKSS chose a humble hut in a small and impoverished village Devdungri in the arid state of Rajasthan, as their base to share the life and struggles of the rural poor. The oldest member of the group was Aruna Roy, who had resigned from the elite Indian Administrative Service over a decade earlier. She had worked in a pioneer developmental NGO, the Social Work and Research Centre, Tilonia, and gained important grassroots experience and contact with ordinary rural people, but now sought work which went beyond the delivery of services to greater empowerment of the poor. She was accompanied by Shankar Singh, a resident of a village not far from Devdungri, whose talent was in rural communication with a rare sense of humour and irony. He drifted through seventeen jobs - working mostly with his hands or his wits in a range of small factories and establishments - before he reached Tilonia, to help establish its rural communication unit. With his wife Anshi and three small children. The third activist of the group was Nikhil Dey, a young man who abandoned his studies in the USA in search for meaningful rural social activism. Together they had come to the village Devdungri, with only a general idea of their goal of work, to build an

organisation for the rural poor. They were much clearer about what they did not want to do: they would not accept funding or set up the conventional institutional structures of buildings and vehicles common to most NGOs, they would not set up the usual delivery systems of services, they would accept not more than minimum wages for unskilled labour, and this too they would derive mainly from small research projects and assistance from friends, they would not accept international or government funding for their work, and they would not live with facilities superior to those accessible to the ordinary small farmer of the surrounding countryside.

The region which they had chosen for their life and work was environmentally degraded and chronically drought prone. The land-holdings were too small to be viable even if the rains came. There were few alternate sources of rural livelihood, and distress migration in the lean summer months was high. Government interventions mainly took the form of famine relief works, like construction of roads and tanks, with extremely high levels of corruption and extremely poor durability. Wages, even on government relief works, were low and payment too erratic to provide any real social security cover. Literacy levels were abysmally low, especially for women (1.4%) and even for men (26%). The average debt burden was colossal, at over 3,200 rupees per household.

b) Registration of MKSS

In their initial years, the MKSS got drawn in as partners in important local struggles of the poor, relating mainly to land and wages, but also women's rights, prices and sectarian violence. On May Day, 1990, the organisation was formally registered under the name Mazdoor Kisan Shakti Sangathan. Its ranks grew as MKSS built a strong cadre drawn from marginal peasants and landless workers, mainly from the lower socio-economic groupings. Locally the organisation gained recognition for its uncompromising but non-violent resistance to injustice such as an epic struggle to secure the payment of minimum wages to landless farm workers, and also for integrity and ethical consistency of the life-styles and the means adopted by its activists the battle against corruption.

c) *Jjan Sunwai*s or Public Hearings

the new instrument of public hearings In the winter of 1994, their work entered a new phase, breaking new ground with experiments in fighting corruption through the methodology of *jan sunwai*s or public hearings. This movement, despite its local character, has had state-wide reverberations and has shaken the very foundations of the traditional monopoly, the arbitrariness and corruption of the state bureaucracy. In fact the movement contains the seeds for growth of a highly significant new dimension to empowerment of the poor, and the momentous enlargement of their space and strength in relation to structures of the state. As with most great ideas, the concept and

methodology of public hearings or *Jan sunwais* fashioned by the MKSS is disarmingly simple. For years, indeed centuries, the people have been in their daily lives habitual victims of an unremitting tradition of acts of corruption by state authorities - graft, extortion, nepotism, arbitrariness, to name only a few - but have mostly been silent sufferers trapped in settled despair and cynicism. From time to time, courageous individuals - political leaders, officials, social activists - have attempted to fight this scourge and bring relief to the people. But in most such efforts, the role of the people who are victims of such corruption has mostly been passive, without participation or hope. Such campaigns for the most part have arisen out of sudden public anger at an event and died down as suddenly or has been sustained critically dependent on a charismatic leadership. Consequently the results of campaigns against corruption have been temporary and unsustainable The mode of public hearings initiated by MKSS, by contrast, commences with the premise of the fundamental right of people to information, about all acts and decisions of the state apparatus. In the specific context of development and relief public works, with which MKSS had been deeply involved for so many years, this right to information translates itself into a demand that copies of all documents related to public works are made available to the people, for a people's audit. The important documents related to public works are the muster roll, which lists the attendance of the workers and the wages due and paid, and bills and vouchers which relate to purchase and transportation of materials.

d) Organising *Jan sunwais* or public hearings

The remaining part of this section elaborates the methodology of organising *Jan sunwais* based on a further documentation of the experience of the MKSS. The initial preparation for a *Jan sunwai* would involve precisely the same steps outlined earlier, of identifying people's problems and relevant information, and accessing and scrutinising documents. Having arrived at *prima facie* cases of corruption, and armed with the necessary documentary evidence, one may fix the date for a *Jan sunwai* or public hearing.

Government officials and *panchayat* members, of the district, block and village levels are also invited to the *Jan sunwai*s. MKSS also invites a panel of impartial observers, comprising persons of eminence from public life, the press and the professions. It has been experience of the MKSS those local government officials, and *panchayat* members, including those likely to be indicted, attend the *Jan sunwai*s, despite the fact that these have no legal sanction. This is also linked to the inclusive nature of *Jan sunwais*, the fact that care is taken that the proceedings must be conducted with forthrightness and courage, but there must be no personal rancour or irresponsible mudslinging. The local officials and public representatives are also given places of respect on the dais, alongside the members of the panel.

At the start of the *Jan sunwai*, the rules of the meeting are laid out. Everyone present is entitled to speak, except persons under the influence of liquor. They must speak only on the theme, and be restrained in their language, strictly abjuring swearwords and phrases, which assault the dignity of any individual. It is also made clear that MKSS activists themselves would speak only on issues on which people from the village community are prepared to speak, because they are only facilitators. Then identified cases are taken up one by one. The documents, and the relevant rules and technical details are not merely read out, but paraphrased and demystified for the assembly. People speak out, and verbal evidence is gathered. Members of the panel intervene wherever they desire. The government and *panchayat* authorities are also encouraged to clarify or defend themselves on any issue.

e) Follow-up Action

Whether people's audit is conducted through statutory bodies for social audit, like *gram sabha*s, or innovative democratic institutions for people's audit like the *jan sunwai*, one major question still remains to be resolved. This is: how does an empowered and informed village community, armed with evidence of the mala fide exercise of authority by public bodies, ensure that the guilty are punished and public interest restored? Answers, because people's audit of public authorities is a new avenue of people's action, these are then read out and explained to the people, in open public meetings. The people thus have gained unprecedented access to information about, for instance, whose names were listed as workers in the muster rolls, the amounts of money stated to have been paid to them as wages, the details of various materials claimed to have used in the construction, and so on. They have learnt that a large number of persons, some long dead or migrated or non-existent, were listed as workers and shown to be paid wages which were siphoned away, that as many bags of cement were said to have used in the 'repair' of a primary school building as would be adequate for a new building, and innumerable other such stunning facts of the duplicity and fraud of the local officials and elected representatives.

It is not as if they were unaware in the past that muster rolls are forged, that records are fudged, that materials are misappropriated, and so on. But these were general fears and doubts, and in the absence of access to hard facts and evidence, they were unable to take any preventive or remedial action. The public hearings dramatically changed this, and ordinary people spoke out fearlessly and gave convincing evidence against corruption, and public officials were invited to defend themselves.

It is interesting and educative to see how officials and public representatives at various levels of the hierarchy have reacted to this unprecedented movement for people's empowerment. For a public hearing organised last year, for instance, the head of the district

administration, known as the Collector, initially acceded to the demands of the MKSS.

f) The agitation spread Rajasthan

Activists, and issued instructions for copies of the muster rolls, bills and vouchers to be given to the activists. The village development officers however refused to comply with the written instructions of the Collector, and went on strike against the Collector's order, insisting that they would submit themselves to an audit only by government, and that they would refuse to share copies of documents with any non-officials. The agitation spread to the entire state of Rajasthan.

The village *panchayat* elections were then in progress and the Collector requested the withholding of the documents until the elections were over so that the village officials' strike does not obstruct the election process. MKSS organised the public hearing in the absence of documents, but were still able to gather evidence for prima facie cases of corruption in works and delays in payment. These were presented to the Collector, who promised an enquiry.

In compliance with this assurance, the official arrived at village Bagmal for an enquiry. The villagers had gathered, and the official commenced his examination in an open space under the shade of a spreading tree. However, *sarpanches* or elected village heads of surrounding villages who had nothing to do with the enquiry in progress, arrived at the spot and raised uproar. A woman *sarpanch* tore the shirt of a villager giving evidence. The official remained silent, but shifted his enquiry indoors. Threats and assaults on the villagers and activists continued subsequently.

It is significant that the local administration in the four districts in which public hearings were organised by MKSS refused to register criminal cases or institute recovery proceedings against the officials and elected representatives against whom incontrovertible evidence of corruption had been gathered in the course of the public hearings and their follow-up.

The enormous significance of this struggle has been its fundamental premise that ordinary people should not be condemned to remain dependent on the chance good Future of an honest and courageous official, or political or social leader, to release them from time to time from the oppressive stranglehold of corruption. The people must be empowered to control and fight this corruption directly. For this, firstly they require a cast-iron right to information. Concretely, this means that the citizen must have the right to obtain documents such as bills, vouchers and muster rolls, connected with expenditures on all local development works. Equipped with such information, as we have seen, the people would be empowered to place this before and explain these documents to the concerned village communities, in a series of 'public hearings'. In these hearings, concrete evidence of

corruption such as false muster rolls, diversion of building materials etc. would come to light. Armed with such evidence, the people would now be empowered to demand action against the corrupt, and recovery of diverted development expenditures.

From public hearings to the movement for an enforceable right to information The public hearings organised by MKSS evoked widespread hope among the underprivileged people locally, as well as among progressive elements within and outside government. In October, 1995, the Lal Bahadur Shastri National Academy of Administration, Missouri, which is responsible for training all senior civil service recruits, took the unusual step of organising a national workshop of officials and activists to focus attention on the right to information.

Meanwhile, responding to the public opinion that coalesced around the issue, the Chief Minister of Rajasthan on 5 April, 1995 announced in the state legislature that his government would be the first in the country to confer to every citizen the right to obtain for a fee photo-copies of all official documents related to local development works.

However, a full year later, this assurance to the legislature was not followed up by any administrative order. This lapse of faith was presumably under pressure both from elected representatives and officials connected with such works, who regard as their birthright the illegal siphoning off of major portions of such expenditure.

Check your progress exercise 1:
Q1) Explain the **MKSS Movement in India?**

_____

_____

_____

_____

_____

2B.4 NCPRI

Formation of a National Campaign for the Right to Information:

The movement for the right to information has caught the imagination of disparate Sets of people. It has touched the middle classes as well as the poor, because of the despair of their unending interface with a corrupt and unaccountable bureaucracy. It has also reached the middle classes through the consumer and environmental movements. The media have a major professional stake in the right to information because it would greatly aid the investigation of executive action. For sustained, informed and vigilant advocacy for the passage of such legislation, a National Campaign Committee for the People's Right to Information was constituted. The

initiative for this initially came from the grassroots activists from Rajasthan, particularly the MKSS, who acutely felt the need both for powerful support at the national level both for the local movement and for wider legislative backing. The initial group that came together comprised senior activists, press persons, academics and serving and retired civil servants, who were actively committed to transparent, accountable and pro-people governance. Their major contribution as a group has been firstly to assist in preparing the Press Council draft various versions of the proposed legislation for right to information (which has been referred to earlier in this sub-section) and the detailed blueprint for its operationalisation. In this in particular serving civil servants and activist lawyers played a central role. Senior press persons such as retired editors of national dailies who continue to write and who are read and heard with considerable respect, played a major role in building public opinion in the media around the issue and the local movement. Academics analysed the issue and placed it in the wider perspective of expanding democratic space. All of these varied groups helped in extending support for the grassroots movements, particularly of the MKSS, around the right to information. It is difficult to predict whether India is at last at the verge of the passage of a landmark law which would explicitly guarantee the people's right to information. However an even greater challenge is to continue anchor the movement and the application of this right in the struggles for survival and justice of the most dispossessed and wretched of the Indian earth, as an important part of a larger movement for equity and people's empowerment.

Check your progress exercise 2:

Q1) Give the Information about the NCPRI **in India?**

_____

_____

_____

_____

_____

2B.5 CHRI

Commonwealth Human Rights Initiative campaign for RTI:

As one of the leading campaigners for the right to information, CHRI has sought to **generate awareness on this issue, support civil society campaigns and provide input into the law making process, drawing on our knowledge of international best practice**.

Movement The apparent paradigm in the above example was stated to be a genuine desire to bring about a change in the culture of governance and in the absence of evidence to the contrary, this was accepted at face value

by the CHRI which proceeded to attempt to create spaces using these openings.

The CHRI's work on the right to information in the state of Madhya Pradesh coincided with the passing of these orders and other developments on the issue in 1997. This gave CHRI a strategic entry point and they used the orders to peg discussion and advocacy around the issue through a series of workshops in the state. Although a year and a half of the operation is, in all fairness, not sufficient to judge the success of the exercise, their findings brought out certain inherent failings which if not addressed soon would nullify the whole exercise or result in the availability of avenues of information to be hijacked by the few to feed their own vested interests. While the government's orders were enabling for the common person to access much of the information required for everyday concerns, CHRI found that the orders were not backed by any mechanism for publicising the same to the public. A government publication ('*Jaanane ka Haq'*) containing the texts of the orders was printed and circulated to the press and whenever the government required political mileage out of it. This publication, even a year and a half later is not freely available, leaving the lay public unaware of the orders. The government claims to have given "press statements" regarding these orders, but these have also been sporadic and no sustained campaign through the press or the electronic media has been planned or executed. Even otherwise, with a literacy rate as low as 43.45% , and many of the areas being tribal belts with poor accessibility to any means of communication, these efforts are hardly likely to be effective.

There is no concrete plan to sensitise or orient bureaucrats and public servants at all levels to the new regime of transparency. There ought to be immediate and forceful introduction of the issue of right to information at all orientation and training programmes carried out by the state academy for administration which conducts programmes for government officials. Interaction with some of the lower bureaucracy revealed that to them the implications of the directives on right to information had no relevance to public dealing and some even considered that these were meant to allow them access to their own service and leave records, etc.

The second drawback detected was the lack of accountability mechanism for enforcement of the orders. While many of the orders stipulate mandatory putting up of notice- boards and periodical mandatory release of information, reports from different parts of the state suggest that this has not been done. While the government in the state capital has devised a system of monitoring the implementation of the orders through a format which the District Collectors are required to submit every month, after compiling the information on implementation . Reporting is poor and out of the 61 Districts, only 33 are reporting. Others are being given reminders. This is an obvious indication of the lack of teeth in the orders. Senior officials say that this can be remedied only by a law on the subject which will bring the errant officials to book.

A law was, in fact passed by the state assembly, but is pending notification in the absence of the President of India's assent. This law is again not an

ideal manifestation of the right to information since it only allows access to information in an enumerated list and is not a general right of access which should be the hallmark of a genuine right to information legislation.

Civil society groups brought together by CHRI have initiated a campaign to educate people about the operation of the right and to activities the orders by filing applications for information. Their experiences have so far not been pleasant and have ranged from dogged refusals to threats of physical harm. The campaign however, aims at increasing interaction between civil society members, media and government and these experiences are now being highlighted through frequent workshops at various levels including the state capital and villages.

A few lessons from the campaign are mentioned here in brief:

The campaign gained considerably from material published and disseminated by CHRI. This was in the form of simple booklets explaining the issues involved. Pictorial representations and explanation of the issues in the context of the problems and experiences of common people encouraged wide-spread interest in the issue.

In the efforts to generate partnerships in advocacy, diverse groups were brought together and encouraged to see the issue of right to information within the framework of their own work. For instance, activists working on health issues could see the importance of having a right to governmental information regarding health schemes like immunisation, Maternal Mortality Rate, etc. Organisations working in the area of education could see the connection between information as to the funds, etc, of schools and community participation in the proper running of schools. Environmental activists could identify strongly with the need for information on environment issues, which are directly concerned with sheer survival.

Constant networking and a continuous flow of information on the issue were very important. Authentic and updated information on any subject is not easily available to people and activists in far- flung areas, with little access to papers and journals. Through constant communication, their interest in the issue can be kept alive.

Frequent interactions at workshops helped to bring the issue in focus. It also helped to reach the ground-level experiences of the people to government and the media, who could either then address the grievances or highlight them. Interaction at all levels ranging from academics, media persons, lawyers and bureaucrats to small-time farmers and activists working on diverse issues helped to zero down on the essentials of the issue which need to be addressed whenever the law is made operational. This feedback is simultaneously compiled and fed to the policy makers.

Check your progress exercise 3:
Q1) Explain the CHRI **in India?**

_____

_____

_____

_____

_____

2B.6 ANNA HAZARE

In 2000, a sustained advocacy campaign by social activist Anna Hazare forced the Maharashtra Government to pass the Maharashtra Right to Information Act 2000. However, civil society groups were unhappy with the Act, criticizing it for being too weak and demanding that it be replaced with better legislation.

In 2001, the Government formed a committee comprising senior serving and retired bureaucrats, such as former Union Home Secretary Dr Madhav Godbole, eminent jurists and Shri Anna Hazare, to prepare a draft of a Freedom of Information Bill.

Before the Committee could release its draft Bill, the Maharashtra Government repealed the Maharashtra Right to Information Act 2000 and replaced it with the Right to Information Ordinance 2002. The Ordinance was promulgated on 23 September 2002. However, the Ordinance lapsed on 23 January 2003 because, in accordance with Article 213(2) of the Constitution of India, an Ordinance must be converted into an Act within 6 weeks of the commencement of the next session of the Legislative Assembly following the enactment of an Ordinance. In this instance, the Maharashtra Government did not convert the Right to Information Ordinance in the winter session of the Legislative Assembly; hence it lapsed.

Public pressure to enact a law on right to information continued. Consequently, in the budget session of the legislature in March 2003, the Maharashtra Government passed the Maharashtra Right to Information Act which it then sent to the President of India for assent. The Act stalled, as no action was taken for months.

Finally, on 1 August 2003, Anna Hazare wrote a letter to Mr. L.K. Advani, the Deputy Prime Minister of India requesting him to advise the Honourable President to give his assent to the Maharashtra Right to Information Act. Failing such action, Sri Hazare warned he would commence a fast unto death. No action was taken, and on 9 August 2003 Anna Hazare started his fast. Within one day, the Government responded. On 10 August 2003, the President of India gave his assent to the Maharashtra Right to Information Act 2002 and on 11 August 2003 the Maharashtra Government notified the Act in the Government Gazette.

The Maharashtra Right to Information Act 2002 is identical to the Maharashtra Right to Information Ordinance 2002. Interestingly, even though the Ordnance lapsed in January 2003, the Act has retrospective effect from the date the Ordinance was passed (i.e. 23 September 2002). Section 21 (2) of the Act makes it explicit that all actions initiated under the Ordinance shall be dealt with under the Act. The Maharashtra Right to Information Rules, which were initially prepared under the Maharashtra Right to Information Ordinance, are equally applicable to Maharashtra Right to Information Act 2002.

Check your progress exercise 4:
Q1) Give information about Anna's movement**?**

_____

_____

_____

_____

_____

2B.7 OTHER

SOME INITIATIVES OF THE BUREAUCRACY

In India, some of the most practical moves for enforcing the right to information have arisen surprisingly from the much-maligned quarters - from members of the bureaucracy and the politicians. This has been possible despite the consistent hostility of the executive in general to transparency, and the fact that the bureaucracy as a whole is deeply corroded by corruption and nepotism.

In India, the few progressive elements in the bureaucracy have often been marginalised. Bureaucrats who attempted to change things and took firm stands against corrupt practices have been routinely transferred out to 'punishment postings' and disempowered. Some attempted to change things in innocuous ways like setting right the system of records, but these exercises were centred around individuals and lasted only until the new entrant. The public remained at the mercy of chance benevolent administrators in the absence of institutionalisation of accountability mechanisms.

Official responsible for development works in a group of villages called a Block Some experiments that bear mentioning are the ones using Information Technology to revamp the system of recording information. As far back as 1985, the District Collector of Karwar District in Karnataka, one of the Southern states, diverted funds meant for a jeep in order to purchase a microcomputer which was successfully used as an analytical tool. In the first year after adopting this system, the district went up from being the 18 to the 3 in the success rate for implementing development programmes. The success of this programme was in its replication to other districts as a

formal Programme named CRISP (Computerised Rural Information Systems Project)

Likewise, in Ahmednagar District of the state of Maharashtra, a Collector revamped the whole records system, allowing the public to get copies of documents and to inspect records easily. This system resulted both in speedy disposal of public grievances as well as a far more professional work environment for the office clerks.

With the wildfire growth of Information Technology, these ideas for accessing information are being given much stress and huge programmes for networking rural districts to enable people to access information are being carried out. The most notable among these is the one taken on by Chief Minister of Andhra Pradesh, another Indian state, by linking through computers all the rural regions. This is being done by setting up information kiosks at the *taluka* level where anybody can have access to desired information from the government. Of course, these experiments in using information technology will pose their own problems in terms of the quality of information made available. For these could well boil down to furtherance of government propaganda and as much can be hidden as revealed. Advocates of the right to information need to keep an eye on all these aspects and ensure that transparency is carried to its logical conclusion and the sources of the information and the generation of information is made equally transparent.

While these experiments were hailed as experiments in good administration, the really dynamic experiment in recent years has been one carried out in one of the Divisions of India's largest state, Madhya Pradesh. This process, as we shall see was not a mere exercise in logistics, but contained strong conceptual and ideological elements which helped later to spur a movement in the entire state, resulting in wide-ranging administrative reforms for openness. The Commissioner sought to systematically introduce transparency in certain key departments like the Public Distribution System, the Employment Exchange, and the Pollution Control Board.

The Public Distribution System in rural India is one of the most corrupt networks, beset with hoarding, supply of sub-standard food grains to the public, illegal sale of the allotted quotas in the open market, and almost always manned by rude and unresponsive persons who make people queue for hours for days on end to receive their share of the basic necessities. Into this cesspool of corruption which daily threatened the food entitlements of the most poor, a system was put into place whereby each outlet was required to send certified copies of the Stock Register, the Sale Register and the Ration Card Register and to these to the *Tehsil* office. From this office, any person could secure certified copies on demand within 24 hours to personally investigate what grains had come, and to whom these were distributed. Installing photocopiers at the *tehsil* offices was made mandatory. This was made cost-effective by buying photocopiers for handicapped persons through a governmental scheme, thereby generating employment as well as adding to administrative efficiency. A deadline was laid down for

adherence to this system and a system of fines was established at all levels for delay in following the system.

Likewise, the Employment Exchange was required to give details about the criterion and procedure for selection to any government position, and the detailed merit list, on demand by any person.

Bilaspur Division is also home to Korba, one of the most polluted areas in the country due to multiple and uncontrolled industrialisation. The administration realised that pollution levels could not be brought down without the active participation of the public. The Pollution Control Board of this area was therefore required to collect and publish daily in the local newspapers, details of the various pollutants in the area, along with the levels of pollution, and a citizens committee was trained and authorised to check the veracity of the readings.

Predictably, this whole exercise soon ran into trouble with the local power groups, and the officer whose brainchild it was, was transferred out of the area. To briefly enumerate the fallout of this exercise: Although the experiment has often been referred to as a "failure" by some quarters in that the number of information seekers was negligible and in that the system collapsed with the exit of the Commissioner, in the duration that the orders for right to information were in operation, the deterrent effect of transparency to corruption and inefficiency became only too apparent. The food grain shops recorded unprecedented excess stocks, as the distributors could no longer oblige local politicians and goons by diverting the stocks to them and to the black market. They even remarked, "the people's right to know has become our right to "no"! Pollution levels showed a marked decline and the daily publication of pollution levels encouraged the public to take an interest in their environment and to question the levels of pollution.

While cynics had a field day criticising the experiment on all fronts ranging from the standard charge of it being 'impractical' to 'not feasible financially,' the ground had been well prepared and the seeds sown for sweeping acceptance of the right to information in principle in the entire state of Madhya Pradesh Since this was an experiment carried out *pro bono*, it found many supporters who could look beyond the teething troubles and sense that here was an answer to many ills to which many cures had earlier failed. It was this realisation that spurred the Chief Minister of the state, himself a professed crusader for decentralisation of power and transparency and accountability, to attempt an enactment for enforcing the right to information.

The attempt was, however, axed by his cabinet. There are unofficial and amusing reports of the horror and dismay of the ministers at the very idea of complete transparency in the working of government. The whole attitude was one of "either this law remains or we remain". Political considerations obviously warranted a backtracking on the move. However, the next move of the State government demonstrates how political will can push reforms

through even in adverse circumstances and how spaces can be created starting from a tiny wedge.

While in a neighbouring state the people were fighting tooth and nail (the MKSS campaign, elaborated in an earlier section) for a governmental order to get photocopying rights in *one* sphere of government, that of the *Panchayats*, the government of Madhya Pradesh surprised all campaigners for the right to information by handing out a veritable bouquet of rights of access to government records in the form of executive orders to 37 departments of the state government. These broadly included the departments of Public Works, Panchayats and Rural Development, Urban Development, Dairy Development, the Public Distribution System, Jails, Social Welfare, Co-operatives, Tribal Welfare Forests, to name a few. The Chief Minister declared his commitment to transparency saying "transparency is essential because it is the basis of Democracy…This will go long way in establishing a vibrant administration, a vibrant society and a vibrant nation. That is why we are telling people before they start asking."

The process followed by the government was strategic in that it attempted to follow the line of least resistance and thereby got through much more than it could have hoped to by forcing it on a reluctant and hostile bureaucracy. "We asked the officials to enumerate all those categories of information which were easily available with them and which could be given without any extra burden on the administration. This has enabled us to give the reforms a practical shape. Gradually, we expect a change in the mind-set as people get used to the idea and then we can always expand the areas for giving information. We felt that it was better to give something rather than deny everything. The whole process was moderated by the department of General Administration which, as the name suggests, is responsible for the overall efficiency and functioning of the administrative structure and also for reforms of this structure. The broad pattern of the orders is a directive to provide photocopies or rights of inspection for certain categories of documents enumerated in the order itself, "for a mass campaign against corruption through the right to information" . The orders prescribe a minimum fee for inspecting the documents and formats for requests for inspection and photocopies. While most of the fee structures seem reasonable, there are some departments where the fee structure suggests that it would act as a deterrent to information seekers, who may most likely be from disadvantaged classes such as those living under the poverty line.

These orders were not issued because of any apparent public pressure or movement, though it is likely that developments in other parts of the country, particularly pervasive public revulsion at corruption in high places, egged on the political masters and the bureaucracy to take pre-emptive measures.

Check your progress exercise 5:

Q1) Give information about CRISP (Computerised Rural Information Systems Project)?

_____

_____

_____

2B.8 CONCLUSION

In summary, there is wide consensus among supporters of the right to information campaign that it is of paramount importance that comprehensive and early legislation is passed that guarantees the right to information. Such a law must secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decision, to ensure that these are consistent with the principles of public interest, probity and justice. It must bring within its purview the judiciary and legislature, while making government explicitly responsible to supply information to the citizen on demand related to the corporate sector and NGOs. It must also contain powerful provisions for penalties and autonomous appeal mechanism. Most importantly, the proposed legislation must make disclosure the rule and denial of information the exception, restricted only to genuine considerations of national security and individual privacy, with the highly significant proviso that no information can be denied to the citizen which cannot be denied to Parliament and the legislatures. It would then truly be the most significant reform in public administration, legally empowering the citizen for the first time to enforce transparent and accountable governance.

2B.9 REFERENCE LIST

- Right to Information Act, 2005: A Primer, Tata McGraw-Hill Publishing Company Linited, New Delhi, 2006 published on behalf of Right to Information Cell, Yashwantarao Chavan Academy of Development Administration (YASHADA).
- Mishra, Neelabh, A Battle Half Won-Right to Information: 6 Combat Law, Bombay, 2003.
- Roy Aruna, A Fight for Right to Know, Yojana, January, 2006.
- Amulya Gopalakrishnan, Information by Right, Frontline, January, 2003.
- People's Right to Information Movement: Lessons from Rajasthan, Neelabh Mishtra,
- Human Development Resource Centre, UNDP, New Delhi, 2003,
- The Movement For Right To Information In India People’s Power For The Control Of Corruption By Harsh Mander And Abha Joshi
- https://studylib.net/doc/11537903/the-movement-for-right-to-information-in-india.

C) RIGHT TO INFORMATION LEGISMTION IN DIFFERENT STATES IN INDIA

Unit Structure

2C.1 OBJECTIVES

- To understand the **Right to Information act in Tamil** Nadu -1997
- To understand the **Right to Information act in** Goa -1997
- To understand the **Right to Information act in** Rajasthan -2000
- To understand the **Right to Information act in** Karnataka - 2000
- To understand the **Right to Information act in** Delhi - 2001
- To understand the **Right to Information act in** Assam - 2001
- To understand the **Right to Information act in**. Maharashtra - 2002
- To understand the **Right to Information act in**. Madhya Pradesh – 2003
- To understand the **Right to Information act in**- 2004

2C.2 INTRODUCTION

After a long protracted battle India finally saw the passage of the Freedom of Information Act 2002 (FOI Act). The Act was passed in December 2002 and received the Presidential assent in January 2003. This legislation will be uniformly applicable all over the country. However, it is not yet operational since the Rules for this Act have not been formulated so far. But even before the Central FOI Act was passed some of the States introduced their own right to information legislation. The first amongst

these was Tamil Nadu (1997) which was followed by Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003) and Jammu & Kashmir (2004). Of these Madhya Pradesh had taken steps to enact a law on this subject as early as 1997 but failed due to lack of consent by the Centre and Maharashtra repealed its earlier RTI Act of 2000 to bring out a stronger one in 2002.

However right to information has emerged as a fundamental right, it could not be considered as the exclusive privilege of the Union to pass a law under its residuary powers and thus

However, a brief sketch of state laws is made hereunder.

1. Tamil Nadu Right to Information Act, 1997
2. Goa Right to Information Act, 1997
3. Rajasthan Right to Information Act, 2000
4. Kamataka Right to Information Act, 2000
5. Delhi Right to Information Act, 2001
6. Assam Right to Information Act, 2001
7. Maharashtra Right to Information Act, 2002
8. Madhya Pradesh Right to Information Act, 2003
9. Jammu and Kashmir Right to Information Act, 2004

2C.3 TAMIL NADU RIGHT TO INFORMATION ACT, 1997

Tamil Nadu was the first State in the country to set an example in enacting a separate Right to Information Law. The Bill was introduced in the Assembly on 17^ April, 1997, Mr. Karunanidhi, the DMK President and then Chief Minister lost no time in introducing the legislation to ensure access to information about the governmental functioning. It is notable that it is the Tamil Nadu Government which initiated the process of developing a law without any pressure from civil society groups.

The Bill was modeled on a draft legislation recommended by the Press Council of India. The Act was passed by the Legislative Assembly in the first half of 1997, received the assent of the Governor on 4 May, 1997 and was notified the following day as Tamil Nadu Right to Information Act, 1997. The legislation stipulates that the authorities should part with information within 30 days of it being sought.

Following the legislation it is said that all Public Distribution System shops in the state were asked to display details of stocks available and that all government departments also brought out citizens charters listing information.

The Tamil Nadu Right to Information Act 1997 is not considered to be a complete law on the subject. It does have any provision for proactive disclosure of information. It also does not clearly provide for its application to the Panchayat Unions, Municipalities and Panchayats etc. The Act has no penalty clause and requester may appeal to the State Government, or any such authority as may be notified by the Government.

The Act has 21 categories of exceptions including 12 sub-clauses within them. As a result, the Act failed to evoke much response from the public and devoted NGOs and other experts. Hence, this Act is said to be not citizen friendly. Though a positive step was taken by the State to pass an access to information law, the law appear to be weak.

Check your progress exercise 1:

Q1) Explain Tamil Nadu Right to Information Act, 1997?

_____

_____

_____

_____

_____

2C.4 GOA RIGHT TO INFORMATION ACT, 1997

Goa was the second State to have the Right to Information legislation. Before the Bill was introduced in the House for consideration, information Minister also took the necessary measures to withdraw an unpopular circular which was issued in October, 1994 by the State Government preventing bureaucrats from divulging information to the press. Goa Right to Information Act was passed on 31st July, 1997 and received Governor's assent on 29 October, 1997 In a statement, the government said, "today there is a wide acceptance that the right to information is indispensable for increasing and enforcing accountability. The right to know can help strengthen democracy. Long-standing demands for greater openness and transparency in administration have gained momentum of late. The courts too have ruled that the right to know was a facet of the fundamental right to speech".

As to the competence of the State Legislature to pass Right to Information Act, Desmond D' Costa, the Judicial Magistrate First Class argued that the State has a right to even repeal provisions of Official Secrets Act, 1923 and Indian Evidence Act, 1872. As per Article 372 of the Indian Constitution, all laws which were in force before the commencement of the constitution shall continue in force until altered by a competent legislature. When a State Act on Right to Information is Constitutional Issues in Freedom of Information prepared, it can provide for the repeal of Section 5 of Official Secrets Act, thereby provision of State Act having full force of law. There may be arguments to the contrary as well.^ The

Madhya Pradesh Act was referred to the President on the issue of competence and the assent was in fact refused.

Goa Right to Information Act, 1997 is known as one of the earliest and progressive legislations, it has the fewest categories of exceptions, a provision for urgent processing of requests pertaining to life and liberty, and a penalty clause. It also applied to private bodies executing government works. There were six grounds on which the Goa Government can reject information to a citizen.

The Act permits the supply of information in English besides furnishing it in the official language, Under the Act, withholding information, which cannot be denied to the State Legislature or supplying wrong information is considered an offence. 'Such action would attract fine of Rs. 50 per day for a delay after 30 days. The Act makes provision for appeal to Administrative Tribunal constituted under the Goa Administrative Tribunal Act, 1965.The decision of the tribunal shall be final.

A provision authorizes the State to withhold any information which will affect public order, without explaining what it means. The exemptions also include sovereignty and integrity of India, security of the state, international relations and trade and commercial secrets and any other information protected by law. The Goa Act also provides for special ten member State Council, comprising officials and non-officials, to promote the culture of openness and transparency and monitor the process of providing information.

Check your progress exercise 2:

Q .1) Explain Goa Right to Information Act, 1997?

_____

_____

_____

_____

_____

2C.5 RAJASTHAN RIGHT TO INFORMATION ACT, 2000

The campaign for the right to information in India at national level was bom out of the struggles of an organization in central Rajasthan called the Mazdoor Kisan Shakti Sangathan (MKSS). The struggle in Rajasthan was sparked off by an initial demand for details of Panchayat level expenditure, grew in four years to a burgeoning movement and campaign for comprehensive legislation at the State and Central levels. In April 1996, a dharna in Beawar, in central Rajasthan, put forth an immediate demand for an amendment in the Panchayat Raj law to allow citizens to obtain certified photocopies of any document in local government offices.

Simultaneously, a demand was made for a comprehensive law for the people's right to information in all spheres of governance.

The Panchayat Raj law was amended after an intensive struggle and the Rajasthan right to information law was finally passed in May, 2000, but it came into force on 26 January, 2001, after that the rules were framed. The Act has 13 Sections in all, 10 of which establish categories of exceptions. It has exceptionally weak clauses for the proactive disclosure and penalties. There is a provision for one internal appeal' and one appeal to an independent body. The Rajasthan Right to Information Act, 2000, in fact has some draconian clauses which give civil servants substantive powers to refuse access. In spite of above weakness, the Act does give people of the State a legal entitlement to seek and receive information in any sector of governance. The Act provides for an obligation to the in-charge officer to maintain records for free access of information.'

Important shortcomings in Rajasthan's right to information law include its many exemption provisions' that have only given authorities ample scope to deny several kinds of information. The provisions for suomoto disclosures are also weak and vague.' Moreover, the final appellate authority, the Rajasthan Civil Services Tribunal was not a truly "Independent appellate mechanism"

Though right to information is a part of the Rajasthan government's rhetoric, there has been no matching evidence of a pro- active campaign or effort to change the prevalent culture of opaqueness and arbitrariness. The Act in its final form retained many of the suggestions of the right to information movement, but diluted others. Activists in the State stated that it is stronger than some State Acts, like Tamil Nadu, but lags behind those of Goa, Karnataka and Delhi.

Rajasthan's ground breaking law does not have penalty provisions.

Check your progress exercise 3:

Q.1) Rajasthan Right to Information Act, 2000?

_____

_____

_____

_____

_____

2C.6. KARNATAKA RIGHT TO INFORMATION ACT, 2000

The storm wind of right to information legislation reached Karnataka as well. Thus the Karnataka Right to Information Act, 2000 was passed by the State Assembly. The Act has very limited provisions for the proactive disclosure of information. The Act contains standard exception clauses

covering many categories of information. It had limited provisions for pro-active disclosure, contains a penalty clause and provides for an appeal to an independent tribunal."

In Karnataka, prior to the enactment of law on access to information there was a law named as Karnataka Freedom of Press Bill, 1983. The essential features of the legislation were (i) immunity to a journalist from disclosure of the source of information (ii) right to access to public documents and (iii) penalty for causing hurt to a journalist on duty.

There are some weaknesses in the above 2000 enactment. First and foremost, the very definition of 'information' is problematic. The definition of 'information' in the Act in broad and says, 'information relating to any matte in respect of the affairs of the administration or decisions of a public authority'. But the application form 'Form A' meant for citizens to apply for information, has room only for requesting 'documents' and not information per se, which may not always be in the form of a 'record' Some officials had denied information on this ground. Further, Section 3 (a) of the Act requires every public authority to catalogue and index all records but this was not complied with by most public authorities. The Act requires every public authority to publicize particulars of the organization, the powers and duties of its officials, the norms set up for the discharge of functions, etc. but this was not implemented in practice. The Act also penalizes officials who did not comply with the law. It requires public authorities to publish all facts regarding their decisions and policies, before initiation of any project or scheme. But this was not brought into force. Thus, a great weakness of the Act was that there were no penalties and disciplinary action against erring authorities.

It is said that certain problems are noticed in the implementation of law. The roadblock was the attitude of government officials who did not respond to petitioner's requests under right to information law.

Check your progress exercise 4:

Q.1) Explain Karnataka Right to Information Act, 2000?

_____

_____

_____

_____

_____

2C.7 DELHI RIGHT TO INFORMATION ACT, 2001

The Government of the National Capital Territory of Delhi has also passed the legislation on Right to Information. The Delhi Right to Information Act, 2001, became effective on October 2, 2001. This law is along the lines of the Goa Act, containing the standard exceptions and providing for an appeal to an independent body, as well as the

establishment of an advisory body, the State Council for Right to Information Act. The residents of the capital can seek any type of information-with some exceptions-from the civic body after paying specified fee. The Delhi Right to Information Act empowers any citizen to inspect any government work or to demand a sample of material. The requested information has to be provided within a month, failing which the concerned officials could be penalized and were liable to pay Rs. 50/- per day for any delay belong 30 days, subject to a maximum of Rs. 500/- per application. It was also clearly stated that wherever the information is found to be false or has been deliberately tampered with, the official would face a penalty of Rs. 1,000/- per application.

Many Departments of Delhi Government were brought under the purview of the Act. In each Department, one senior officer was designated as the competent authority to accept the request forms and to provide the information sought by the people.

Check your progress exercise 5:

Q.1) Explain Delhi Right to Information Act, 2001?

_____

_____

_____

_____

_____

2C.8. ASSAM RIGHT TO INFORMATION ACT, 2001

Assam is the only state in the North East which has enacted right to information legislation. Though it is a welcome step, it is notable that the passage of the Assam Right to Information Act, 2001 came as a surprise to most. The Act was brought in quietly and there was hardly any discussion on its content it did not follow a participatory approach in law-making that is essential to ensure that legislation meets the needs of citizens.

The Act defines 'information' and 'right to information' elaborately. The Act provides that every officer of the State Government or Public Authority shall maintain the records in such manner as may be prescribed in this behalf by the State government or Public authority, as the case may be from time to time. The Act contains procedure for supplying of information. Also contains appeal and penalty provisions for not supplying information within the prescribed period.

The Assam Right to Information Act, 2001 is the only law that provides for mandatory publicity which was not recognized by other state laws.

Check your progress exercise 6:

Q.1) Explain Assam Right to Information Act, 2001?

_____

_____

_____

_____

_____

2C.9. MAHARASHTRA RIGHT TO INFORMATION ACT, 2002

The Maharashtra Government pressurized by a sustained advocacy campaign by a social activist Anna Hazare, passed the Maharashtra Right to Information Act, 2000. Maharashtra's Act of 2000 was modeled after the flawed Act of Tamil Nadu. However, it was criticized for being weak law. Acceding to demand made by Anna Hazare, the State Government appointed a Committee in 2001. But before the Committee could release its draft Bill, the Maharashtra Government released the Maharasthra Right to Information Act, 2002 and replaced it with the Maharastra Right to Information Ordinance, 2002 promulgated on 23"September, 2002. The Ordinance lapsed in barely four months on 23" January, 2003. After persistent efforts being made, finally on 10 August, 2003, the President gave his assent to the Maharashtra Right to Information Act, 2002 on 11 August 2003. The Act has retrospective effect and Section 21 (2) of the Act makes it explicit that all actions initiated under the Ordinance shall be dealt with under the Act. A Review and Implementation Committee was also set up to oversee implementation of the Act.

This legislation was a class apart from most others. The Maharashtra Legislation was called the most progressive of its kind. Coverage of this law was extensive. The Act brings not only the government and semi government bodies within its purview but also state public sector units, co-operatives, registered societies (including educational institutions) and public trusts. This was absent in other state Acts. It provided that the Public Information Officers (PIOs) must be appointed in all State government organizations and must give the citizen the information within 15 working days. The Act also contains severability provision to provide information.

The Act provides that the penalty imposed "shall be recoverable" from the salary, "or if no salary is drawn, as arrears of land revenue". This was a step ahead of the laws in Goa and Delhi. The Act provides for the setting up of a Council to monitor the working of the Act and review the functioning of the Act at least once every six months. The main objective of bringing the Act is to ensure clean and good governance and thereby strengthen democracy. Under the Act, information that is forbidden by any court of law or tribunal to be published is exempted from disclosure. The

Act, however, does not provide for inspection of the material used in a public work. This is a major lacuna. The Act does not explicitly make it mandatory for trusts and co-operatives to designate public information officers and disseminate information.

Check your progress exercise 7:

Q.1) Explain Maharashtra Right to Information Act, 2002

_____

_____

_____

_____

_____

2C.10 MADHYA PRADESH RIGHT TO INFORMATION ACT, 2003

Madhya Pradesh (MP) has introduced the Right to information Bill, 1998. The Bill aimed at providing transparency in the administration. It was passed by the Madhya Pradesh Assembly on April 30, the same year. Earlier, the Government of M.P. in 1997 gave its citizens right of access to government records in the form of executive order in 37 departments of the State Government. The Right to Information was part of the eleven point program of the Madhya Pradesh Government. Although, the State Government has taken several initiatives to operationalize people's right to information, the experience shows that the implementation of right to information initiatives in the state has been brought with problems.

The State of Madhya Pradesh finally passed the Right to Information Act in 2003 and received the assent of the Governor on the 24 January, 2003. The Bill was strangely refereed to the President who refused his assent. It is surprising when similar laws in Goa and Tamil Nadu have been passed and assented to by their Governors, why this Bill was sent to the President. The Madhya Pradesh law puts an obligation on public authorities to make available information proactively, especially information relating to health and security of person.

An application requesting for information can be accepted or refused within 30 days. The law says that reasons for refusal have to be given. It also provides for the 11 categories of exceptions. 'It does not fix any fees and leaves it to be determined by the government. There is a provision for an appeal and revision. 'It makes the erring official liable to pay a fine not exceeding Rs. 2,000.It also sets up an Advisory Board to oversee the implementation of the Act.

Check your progress exercise 8:

Q.1) Explain Madhya Pradesh Right to Information Act, 2003

_____

_____

_____

_____

_____

2C.11 JAMMU AND KASHMIR RIGHT TO INFORMATION ACT, 2004

Central laws are not automatically applicable to Jammu and Kashmir in view of Article 370 of the Indian Constitution. Separate laws and rules for the State of Jammu and Kashmir are made under the name of its autonomy, which is indeed a most sensitive issue. Autonomy is supposed to safeguard the interests of the people in the State.

The Jammu and Kashmir has passed Jammu and Kashmir Right to Information Act, 2004. This is the only State law that has remained in full use even after the enactment of the national Right to Information Act, 2005, since Jammu & Kashmir does not fall within the purview of the Central legislation according to Section 1 (2) of the Act. The Act defines 'right to information' as right to obtain information relating to the affairs of the State or public bodies by means of:

i) Obtaining certified copies of documents or records, or

ii) Inspection of accessible records and taking notes and extracts, or

iii) Inspection of public works: or

iv) Taking of samples of material from public works, and

v) Diskettes, floppies or in any other electronic mode or through print outs where such information is stored in a computer in any other device.

The Act provides procedure for supply of information. Besides, the Act also exempts certain information from disclosure that affects the nation's security, information given in confidence, etc. It also Act also specifies about third party information which states that where an in charge of office intends to disclose information on a request made by a party which relates to or has been supplied by a third party and has been treated as confidential by that party, the in-charge of office shall by notice to that third party invite representation against such proposed disclosure.'

The Act provides for an obligation on the in charge of the office to maintain records for the purpose of access to information and furnish it within a specified period. The Act also provides for an appeal provision.

As to the penalties, the Act states that where any person responsible for making available information under this Act, fails without any reasonable cause to furnish information sought by any citizen under the provisions of this Act within the time specified or furnishes any information which is false with regard to any material particulars and such he knows and has reasonable cause to believe it to be false or does not believe it to be true, he shall be liable, after such inquiry as may be required under rules pertaining to disciplinary action applicable to him> for imposition of such penalty as may be determined by the disciplinary authority under such rules.

Check your progress exercise 9:

Q.1) Explain Jammu and Kashmir Right to Information Act, 2004?

_____

_____

_____

_____

_____

2C.12 CONCLUSION

Overall, it may be observed that a debate, which was initiated on right to information laws in India, may be seen as a symbolic step towards recognition of the "Right to information, as a political as well as legal right. There is a lack of uniformity in the State laws on Right to Information, the quality and content of the laws also varies drastically across states. Further, implementation of the laws was one of the major lacunae that appeared as an obstacle even in the so called progressive states like, Delhi, Maharashtra or Karnataka. Perhaps, one of the major drawbacks was lack of awareness among people about the law and its provisions- No law except the Assam Right to Information Law^^ in the country, in fact, provides for its mandatory publicity and there is no effort to sensitize the media. Yet, it may be seen these laws are a beginning of a new area of participatory democracy.

2C.14 REFERENCE

- S.P. Sathe, Right to Information, 2005
- Raj Kumar Pruthi Manual of Right to Information, 2006.
- Faizan Mustafa Constitutional Issues in Freedom of Information: National and International Perspectives, 2003.
- Salum Nigam, Right to Information Law in India: Problems and Perspectives, 2006.
- Dr.Niraj Kumar, A Hand Book on Right to Information Act, 2005

❄❄❄❄❄❄❄

3

RIGHT TO INFORMATION ACT, 2005: OBLIGATION OF PUBLIC AUTHORITIES

a) Eligibility of applicants
b) Public authority obligations about suomotto disclosures, Appointment of PIO and their duties.
c) Submissions and Disposal of Applications

3A. Eligibility of applicants

Unit Structure

3A.1 OBJECTIVES:

- To understand the Eligibility of applicants in RTI Act-2005
- To understand the Public authority obligations about suomotto disclosures, in RTI 2005.
- To Study of Appointment of PIO and their duties. in RTI 2005.
- To Study of Submissions and Disposal of Applications in RTI 2005.

3A.2 INTRODUCTION:

The Right to Information Act, 2005 is one of the important legislations passed by the United Progressive Alliance Government at the Centre with more effective provisions compared to Freedom of Information Act, 2003 of Bharatiya Janatha Party Government. It is a people's Act. Every citizen will be greatly influenced by this sunshine Act in India by one way or the other. It gives all pervasive provisions to ascertain information inter alia from the public authorities. The Right to Information Act basically has two parts - a) Substantive law and b) Procedural law. Section 3 be could coupled with some other provisions like Sections 8, 9, 18, 19 and 20 of the Act that deal with substantive law while Section 6 along with some other provisions like Section 7 of the Act deal with procedural law. Thus the Act is a complete Code in itself.

Hence, it is necessary to study the Act as under.

3A.3 PREAMBLE OF THE ACT

The preamble of the Act says that the Act has been enacted for establishing "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 and for matters connected therewith or incidental thereto". It further points out that democracy requires an informed citizenry and transparency in governance which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed. The preamble, however, also refers to the exemptions and says that, in some cases, revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the governments, optimum use of limited physical resources and the preservation of confidentiality of sensitive information. The Act proposes to harmonise these conflicting interests while preserving the paramountcy of the democratic idea.

3A.4 SCOPE AND EXTENT

The Right to Information Act, 2005 extends to the whole of India except the State of Jummu and Kashmir. It covers all public authorities whether falling under jurisdiction of Central government or State Government. It entitles every Indian citizen to seek information from a public authority in the prescribed manner. Some state Acts have been repealed. Where the state Act has not been repealed, both the Central and the state Acts will operate simultaneously. In case of a conflict, the central law will prevail. Where state Acts have been repealed, some problems of administration have arisen.

The Right to Information Act, 2005 particularly came into force on 12-10-2005. However, certain provisions necessary to establish a working framework came into force on15-6-2005. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty.

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act. Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

3A.5 PUBLIC AUTHORITY

The term 'public authority' has been defined elaborately in the Act. Public authority means any authority or body or institution of self-government established or constituted –

a) by or under the Constitution,

b) by any other law made by Parliament,

c) by any other law made by State Legislature,

d) by a notification issued or order made by the

Appropriate Government and includes any i) body owned, controlled or substantially financed, (ii) non-government organization substantially financed,- which, in clauses (a) to (d) are all, directly or indirectly funded by the appropriate Government.

Public authority under the Act is an umbrella term covering all those owned, controlled or substantially financed and also NGOs substantially financed directly or indirectly by the concerned Government. In this definition, all the categories mentioned above except those mentioned in sub-clause (d) (i) and (ii) of Section 2 (h) come within the definition of the word 'State' in Article 12 of the Constitution. Since the Supreme Court has held that the right to information is included within the right to freedom of speech and expression guaranteed by Article 19 (1) (a) and also under Articles 14 and 21, that right is constitutionally available against authorities or bodies which come within the meaning of the word 'State' in Article 12 of the Constitution.

3A.6 PROACTIVE DISCLOSURE: OBLIGATIONS OF PUBLIC AUTHORITIES

Lawrence, J. Peters very aptly said, "Nobody has a more obligation to obey the law than those who make the law". Precisely this is the fundamental reason why the Right to Information Act, 2005, forms the shape of special legislation imposing the obligations on every public

authority to make available information imposing the obligations on every public authority to make available information to the people seeking it. The Act has imposed many obligations on the public authorities. The Act has specified the areas of obligations. They are as follows:

a) **Maintenance of Records:**
The very first activity highlighted under the operational part of the Act requires public authorities to "ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated" A proper system has to be evolved by the public authority to maintain records pertaining to requests seeking information, the type of information provided, if not, the basis on which information denied, appeals preferred to higher authorities/Commission, etc. Such details are required under the Act to be consolidated by the end of the year, for placing before the State Legislature or the Parliament as the case may be.

b) **proactive disclosure:**
The Act requires all the public authorities to proactively publish the information. In order to minimize the number of requests for information, the Act indicates the general types of information which are proactively to be published by the public authority. The pro-active disclosure requirement under the Act came into force with the enactment of the Act on June 15, 2005. In any case, a public authority has to comply with all the provisions of the Act within 120 days from its enactment. The list mentioned in the Act is not exhaustive but it is illustrative." There could be other information as may be prescribed every year.

Section: 4 (1) (a) Every public authority shall 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 all records that are appropriate to be computerised are within a reasonable time and subject to availability of resources computerised and concerned through network all over the country on different systems so that access to such records is facilitated.

Section 4 (l)(b): Publish within one hundred twenty days from the commencement of this Act -

i) the particulars of its organization, functions, and duties;

ii) the power and duties of its officers and employees;

iii) the procedure followed in its decision making process, including channels of supervision and accountability;

iv) the norms set out by it for the discharge of its functions;

v) the rules, regulations, instructions, manuals and records used by its employees for the discharge of its functions;

vi) a statement of the categories of the document held by it or under its control;

vii) the particulars of any arrangement that exists for consultation or representation, by members of the public, in relation to the formulation of policy or implementation thereof;

viii) a statement of the boards, councils, committees, and other bodies consisting of two or more persons, additionally information as to whether the meeting of these are open to the public, or the minutes of such meeting are accessible to the public;

ix) a directory of its officers and employees;

x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

xi) the budget allocated to each of its agencies, indicating the particulars of all plans, proposed expenditure and reports on disbursements made;

xii) the manner of extension of the implementation of subsidy programmes, including the amount allocated and the details of beneficiaries of such programmes;

xiii) particulars of recipients of concessions, permits or authorizations granted by it;

xiv) details of the information available to, or held by it, reduced in an electronic form;

xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room if maintained for public use;

xvi) the names, designations, and other particulars or the Public Information Officers;

xvii) such other information as may be prescribed and there after update these publications every year. enactment. The list mentioned in the Act is not exhaustive but it is illustrative. There could be other information as may be prescribed every year.

Most of the departments of the State/Central Government publish certain information booklets/pamphlets for the general information of the public. Such publication should continue in normal manner. The whole purpose of this provision is to make information accessible without a citizen having to ask for it. A Citizen will then have comparatively fewer queries to make and that makes the operation of the right to information practicable. But that does not make the individual's query less important.

In addition to the proactive disclosure under Section (4) (b) of the Act imposes an obligation to publish all relevant facts while formulating important policies. Additionally, the public authority should provide reasons for its administrative or quasi-judicial decisions to the affected persons.

The Act requires every information to be disseminated widely and in such form and manner that it is easily accessible to the public. Such information should also be made readily available with the Public Information Officer. The medium of dissemination would depend upon the various considerations: language in which information is to be disseminated, the accessibility for public if made available in electronic format, etc.

Information

The Act defines 'information' as any material in any form, including the records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force.

3A.7 ELIGIBILITY OF APPLICANTS (CITIZENS HAS RIGHT TO INFORMATION)

The Act recognizes 'Citizens' Right to Information'. All the citizens shall have right to information subject to the provisions of the Right to Information Act, 2005, It is all the citizens and not any citizen interested nor any aggrieved party by any decision or action of the word 'record' is defined as including (a) any document, manuscript and file, (b) any microfilm, microfiche and facsimile copy of a document, (c) any reproduction of image or images embodied in such microfilm and (d) any other material produced by a computer or any other device.

Section 2 (i) "Right to information " means the right to information accessible under this Act which is held by or under the control of any public authority and includes a right to- i) inspection of work, documents, records, (ii) taking notes, extracts or certified copies of documents or records, (iii) taking separate samples of material, obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Section 2 (j) public authorities. Anyone can seek any information from the concerned PIO on any subject relating to administration and secure it for no cost or nominal charges. The applicant need not disclose as to how he is interested in the information nor is he required to state the purpose for which the information is required or the purpose for which the information so procured will be used, except for such details as may be necessary for contacting him. It may be presumed that information sought for shall be on the affairs of the state and shall not relate to the matters of common knowledge. As such the information sought may not be of frivolous and vexatious in nature and as may be seen, the Act nowhere provides for imposition of any penal action on the erring citizens seeking such information.

B) Public authority obligations about suo motto disclosures, Appointment of PIO and their duties.

3B.1 APPOINTMENT AND THEIR DUTIES OF PUBLIC INFORMATION OFFICERS(PIOS) AND ASSISTANT PUBLIC INFORMATION OFFICERS(APIOS)

Public Information Officers (PIOs) and Assistant Public Information Officers (APIOs), at the Central and State level, as the case may are designated in all administrative units and offices of public authority to provide information to persons requesting for information under the Act. They play a crucial role in the implementation of the provisions of the Act.

Identification and Designation of PIOs/APIOs: The public authorities are required to designate, within hundred days after June 15, 2005, as many officers as Central Public Information Officers (CPIOs) or State Public Information Officers (SPIOs) as the case may be, in all their administrative units and offices Designation of PIOs. is a matter of absolute priority for the public authorities as above said time specification is a mandatory.

Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

There cannot be a standard scale for the number of PIOs. The number and levels of officers designated as PIOs would vary from authority to authority. However, it could be safely stated that, to provide information to persons requesting for information under this Act efficiently and effectively, more the number of PIOs, the better it would be.

The PIOs are the custodians of the Right to Information; the level of officers to be designated assumes greater importance. If they are relatively senior officers, then they can take quick decisions and not in providing information. This may, however, pose a problem in setting up of Appellate Authorities as to such senior officers have to be available in good numbers for the same.

Size and Level of PIOs: The level of PIOs would differ from public authority to public authority. The type of information largely sought by the citizen would also have a bearing on the level. Even within, a public authority, the levels at which PIOs are to be designated may vary in its administrative units or offices. It looks advisable to have as many PIOs as possible, at least in the initial stages. As the system stabilizes, and over a period of time, the optimum size could be determined. The public authorities may not find themselves in a situation wherein the designated PIOs are few and unable to cope with the 'flood' of requests. It could also be argued that designating a larger number of PIOs may create certain problems. Since all the officers are not of the same caliber, the right decision about giving information or rejection of request could pose difficulties and the quality of decision also vary widely, if there are large numbers of PIOs. Again, such arrangements may eventually lead to delays in providing information and also passing of requests among themselves. As a thumb rule, the authorities may not designate senior most or junior most officers as PIOs. Since the government officers may be transferred from time to time, it may be better to indicate the PIOs by designation rather than by names Obligations of Public Information Officers: The Act imposes a primary obligation on the PIOs. to provide information to persons requesting information under the Act. They have to deal with requests for information and also provide reasonable assistant in meeting the same.

The following Duties (obligations)of PIOs. under the Act:

a) to provide information to persons requesting for the information under the Act. (Sec. 5(1))

b) to deal with the requests for information and also provide 'reasonable' assistance to those needing the same. (Sec. 5 (3))

c) PIO may seek the assistance of another officer for the discharge of his/her duties. In such eventuality, the other officer would be treated as PIO.(Sec 5 (5)).

d) PIO, on receipt of the request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed along with the application or reject the request for any of the reasons specified in Sections 8 or 9. (Sec. 7 (1) e) Where the information requested concerns the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request. (Sec. 7(1))

f) The Act nowhere states as to the required qualifications of the public information officers and assistant information officers and as to how they are to be designated. Since the Act uses the word 'designate', it means that the Information Officers and Assistant Information Officers are to be appointed from amongst the existing civil servants.

Where a request has been rejected, the PIO shall communicate to the applicant, the reasons for such rejection, the period within which the appeal against such rejection may be preferred, and the particulars of the Appellate Authority.

g) PIO shall provide information in the form in which it is sought unless it would be disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. (Sec. 7 (3))

h) In the fallowing partial access, the PIO shall give a notice to the applicant, informing: (Sec. 7 (4)

1) that only part of the record, after severance of the record containing information which is exempted from disclosure, is being provided.

2) the reasons for the decisions, including any findings on any material, question of fact, referring to the material on which those findings were based.

3) the name and designation of the person giving the information.

4) the details of the fees calculated and the amount of fee which the applicant is required to deposit etc.

i) If information is sought by third party or is treated as confidential by third party, the PIO shall give a written notice to third party within 5 days from the receipt of the request and take its representation into consideration. (Sec. 7 (7) and 11 (1)).

j) Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice. (Sec. 11(2)

PIO is the interface between the citizen and the organization. Total onus rests with the PIO in providing the information sought within the stipulated period of thirty days. Depending on the findings and the decisions taken, the penalty is levied on the PIO only. The burden is on the PIO to prove that he acted reasonably and diligently, before the Information Commission. He has to support the same with documentary Evidence.

3C SUBMISSIONS AND DISPOSAL OF APPLICATIONS

a) Format of Application

There is no prescribed format of application for seeking information. The application can be made on plain paper. The application should, however, have the name and complete postal address of the applicant. Even in cases where the information is sought electronically, the application should contain name and postal address of the applicant.

b) Application or Request for Information

Section (6) (1) A person who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in official language of the area in which the application is being made, accompanying such fee as may prescribed, to

a) the central public Information Officer or State Public Information Officer as the case maybe of the concerned public authority,

b) the central Assistant Public Information Officer or state Assistant Public Information Officer has the case maybe specifying the particulars of the information sought by him or her: provided that where such request cannot be made in writing the Central Public Information Officer or a State Public Information Officer as the case maybe shall render all responsible assistance to the person making the request orally or reduce the same in writing,

c) acceptance of request and Transfer

(1) an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that maybe necessary for contacting him,

(2) where an application is made to a public authority requesting for an information

(i) which is held by another public authority or

(ii) the subject matter of which is more closely concerned with the functions of another public authority, the public authority to which such applications is made, shell transfer the application or such part of it is may be appropriate to that other public authority and inform the applicant immediately about such transfer. Provided that the transfer of an application pursuant to this sub section shall be made as soon as possible but in no case later than 5 days from the date of receipt of the application.

d) Time Frame for Providing Information

The Act provides for specific time frame for supplying the information and deciding the applications under Right to Information Act. "Justice delayed is justice denied". The time limit prescribed in regard to the supply of information, etc. is: **30 days**, on receipt of a request for information, the PIO has either to provide information on payment of such fee as prescribed or reject the request with reasons for the same. If the information sought concerns the life or liberty of a person the same has to be provided immediately, in any case, within **48 hours**; 5 days where PIO intends to disclose any information which relates to or has been supplied by a third party and has been treated as confidential by it, the PIO has to give a written notice to such third party and to invite the third party to make a submission, **10 days** for third party to make a submission, 35 days and an additional five days are added if the application for information is received by the APIO. **35 days** similarly an additional 5 days are added, if the subject of the application pertains to another organization/department. If the requisite information is not provided to the applicant within the stipulated period, the applicant is to be provided information free of charge and the applicant is also permitted to prefer an appeal against it.

e) Determination of Fee

The fee shall be such as may be prescribed by rules. An application for information must be accompanied with the prescribed fee. Where information is provided in printed or electronic format, the applicant shall pay such fee as may be prescribed. The prescribed fee, including, the fee mentioned above, shall be reasonable and no fee shall be charged from persons who are below poverty line as may be determined by the appropriate authority. Furthermore, the person requesting the information shall be supplied such information without charging any fee if the information officer fails to give it within the stipulated time limit.

The concerned person who has requested for information should be told when and where an appeal could be filed against the decision regarding the additional fees.

f) Rejections and steps involved

The PIO is required under the Act to either provide the information on payment of the request fee or reject the request within 30 days of the receipt of the request, Grounds on which the PIO may reject the request for information are enumerated in Section 8 and 9 of the act.

Where a request has been, the following steps are involved:

Within 30 days of the receipt of the request the PIO will communicate the decision to the person making the request along with:

i) the reason for rejection.

The period within which an appeal against such rejection may be preferred (within 30 days of the date of the rejection.)

ii) The particulars of the appellate authority

- Within 90 days from the date on which the decision should have been made or was actually received a second appeal can be preferred within the concerned information commission.
- If a third party is involved the concerned information commission shall give a reasonable opportunity of being heard to the third party
- The onus to provide that a denial (Rejection) of request was justified is totally and exclusively on the PIO the decision of the information commission is binding
- If the PIO fails to give decision on the request for information within the prescribed period the Public Information Officer shell be deemed to have refused the request. It is pertinent to note that if a public authority fails to comply with the specified time limit. the information to concerned applicant would have to be provided free of charge.

CONCLUSION

- The Right to Information Act has not achieved its full objectives due to some impediments created due to systematic failures. It was made to achieve social justice, transparency and to make an accountable government.
- This law provides us with a priceless opportunity to redesign the processes of governance, particularly at the grassroots level where the citizens' interface is maximum.
- It is well recognized that the right to information is necessary, but not sufficient, to improve governance. A lot more needs to be done to usher in accountability in governance, including protection of whistleblowers, decentralization of power and fusion of authority with accountability at all levels.
- As observed by Delhi High Court that misuse of the RTI Act has to be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act".

Check your progress exercise 1 :

1) Explain Proactive Disclosure: Obligations of Public Authorities in Right to Information 2005?

2) Give Eligibility of applicants in Right to Information 2005?

3) Express Appointment and Their Duties Of Public Information Officers (PIOs) and Assistant Public Information?

4) Explain Submissions and Disposal of Applications in RTI?

REFERENCES :

Awasthi, S.K., The Right to Information Act, 2005,Dwivdi Law Agency, Allahabad, 2008.

Basu, Durgadas, Introduction to the Constitution of India, Wadhava and Company, Nagpur, 2000

Bhambri, C.P., the Modern State and Administrative Secrecy: a Case Study of India, XXX, Indian Journal of Public Administration, New Delhi, 1973.

Chakroborty, R., The Right to Information Act, 2005, Kamal Publishers, New Delhi, 2007.

Chaturvedi, T.N, (Ed.), Secrecy in Government, Indian Institute of Public Administration, New Delhi, 1980.

Das, P.K., The Right to Information Act, 2005, Universal Law Publishing Co. Pvt. Ltd. Delhi, 2005.

❄❄❄❄❄❄❄

4

EXEMPT INFORMATION AND FUTURE TRAJECTORY

a) Exemptions, Larger public interest and copyrights
b) Severance of information, Third Party Information
c) Whistleblower Act, Right to Hearing, Grievance Redressal Bill, Right to Public Services.

4A) Exemptions, Larger public interest and copyrights

4A.1 OBJECTIVES :

- To understand **Exemption from disclosure of information**
- To understand **Second Scheduled of the Act and Section 24** of The Act
- To understand concept of **larger public interests in RTI**
- To understand relation with **Copyrights and RTI**
- **To study about Severance of information**
- **To learn Third Party Information and how to disclose of Third Party information**
- To understand **Information Commissions (CIC/SIC) and Powers and Functions of Information Commissions**

4A.2 INTRODUCTION:

The act is one of the most important acts which empower ordinary citizens to question the government and its working. This has been widely used by citizens and media to uncover corruption, progress in government work, expenses related information, etc.

All constitutional authorities, agencies, owned and controlled, also those organizations which are substantially financed by the government comes under the purview of the act. The act also mandates public authorities of union government or state government, to provide timely response to the citizens' request for information. The act also imposes penalties if the authorities delay in responding to the citizen in the stipulated time as well as The information which, in normal course, is exempt from disclosure under section of Section 8 and 9 of the Act, would cease to be exempted as well as section 24 which exempts several organizations from disclosing information, thus promoting non-transparent functioning of various public institutions.

In cases which involves section 8 (1) (i), the public authority may declare information requested but only after taking into account larger public interest into account. For this purpose we first have to understand what really public interest is as per the RTI Act.

4A.3 EXEMPTIONS:

Exemption from disclosure of information:

Sub-section (1) of section 8 and section 9 of the Act enumerate the types of information which is exempt from disclosure. Sub-section (2) of section 8, however, provides that information exempted under sub-section (1) or exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure oven weighs the harm to the protected interest.

The information which, in normal course, is exempt from disclosure under sub-section (1) of Section 8 of the Act would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to be exempt and there would be no obligation, even after lapse of 20 years, to give any citizen-

(i) information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;

(ii) information the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or (iii) cabinet papers including records of deliberations of the Council of Ministers,

Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section(1) of Section 8 of the Act.

Exemptions against furnishing information under the RTI Act have been provided under Section 8(1) and Section 9 of the Act. Unless the public authority is able to demonstrate that information sought for falls under any of the exempted categories of information, it would be bound to provide the information and that reasons for rejection of requests for information must also be clearly provided. Section 8 (1) of the RTI Act being a non-obstante provision, over-rides other provisions of the RTI Act.

4A.4 SECTION 8- EXEMPTION FROM DISCLOSURE OF INFORMATION:

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) Information received in confidence from foreign government;

(g) Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) Information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the

basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

4A.5 SECTION 9 – GROUNDS FOR REJECTION TO ACCESS IN CERTAIN CASES:

Without prejudice to the provisions of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

4.6 SECOND SCHEDULED OF THE ACT:

Section 8 and 9 of the act enumerate the categories of information which are exempt from disclosure. At the same time Schedule second of the act contains the same of the Intelligence and security organisations which are exempted from the review of the Act the applicants may abstain from seeking information which is exempt under Section 8 and 9, also from the organisations included in the second schedule, except information relating to alienations of corruption and human rights violations. The RTI Act comes with certain exceptions and exemptions. Most of these exemptions are covered under section 8 (1) of the act. Yet, there exists section 24 which exempts several organisations from disclosing information, thus promoting non-transparent functioning of various public institutions.

4A.7 SECTION 24 OF THE ACT "ACT NOT TO APPLY TO CERTAIN ORGANIZATIONS—

1. Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

2. The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

3. Every notification issued under sub-section (2) shall be laid before each House of Parliament.

4. Nothing contained in this Act shall apply to such intelligence and security organisations, being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

5. Every notification issued under sub-section (4) shall be laid before the State Legislature."11 Section 24 of the RTI Act is one of the most disputed yet important sections of the Right to Information Act, 2005. It exempts intelligence and security organisations from the purview of the Act and hence, puts a bar on the amount of transparency in the government and several public authorities and by extension, a bar on democracy itself. It appears that as of late, it has become a prestige issue for organisations to be included in the list of exempted institutions. The biggest reason why organisation wants to exempt themselves under section 24 is that unlike section 8, wherein public interest can be kept ahead of the interest of the withheld information,

Section 24 provides almost absolute exemption. In other words, there arises no question of public interest when taken recluse under section 24. These organisations are also exempted from proactive disclosure of their administration under section 4 (1) of the Act. Thankfully, these organisations still have a duty to disclose information in case there is an allegation of human rights violation or of corruption.

4A.8 THE 2ND SCHEDULE

The 2nd schedule of the Right to Information Act, 2005 provides a comprehensive list of 26 organisations which are exempted from providing information on the grounds of them being intelligence and security organisations. The Central government has the authority to amend the 2 nd schedule from time to time, thereby adding, removing or substituting organisations present in the said schedule. The state government has a similar authority and is authorised to exempt an intelligence and security organisation by issuing a notification in the official gazette. Both the central and the state governments are required to present the said notification before their respective legislatures. The organisations currently exempted under section 24 are as follows: 1. Intelligence Bureau 2. Research and Analysis Wing of Cabinet Secretariat 3. Directorate of Revenue Intelligence 4. Central Economic Intelligence Bureau 5. Directorate of Enforcement 6. Narcotics Control Bureau 7. Aviation Research Centre of the Cabinet Secretariat12 8. Special Frontier Force of the Cabinet Secretariat13 9. Border Security Force 10. Central Reserve Police Force 11. Indo-Tibetan Border Police 12. Central Industrial Security Force 13. National Security Guards 14. Assam Rifles 15. Sashastra Seema Bal14 16. Directorate General of Income – Tax (Investigation) 15 17. National Technical Research Organisation16 18. Financial Intelligence Unit, India17 19. Special Protection Group18 20. Defence Research and Development Organisation 21. Border Road Development Board 22. National Security Council Secretariat19 23. Central Bureau of Investigation 24. National Investigation Agency 25. National Intelligence Grid 26. Strategic Forces Command.

Section 24 of the Right to Information Act, 2005 act faced heavy criticism when the Act was being publicly discussed. Right to Information Act is supposed to promote transparency in the functioning of the government and more involvement of the general public in the matters of administration and better functioning of the public authorities. It is only when the people know how the government is functioning, they can fulfil the role which democracy assigned to them and make democracy really a participatory democracy.

However, section 24 does completely opposite of that. It creates prejudices and suspicions in the minds of general public as regards the undisclosed information. As aforementioned, organisations, nowadays, have made it a question of reputation to include themselves in the list of exempted organisations. It is understood that the intelligence organisation cannot disclose sensitive and confidential information as it may put the security and strategies of the nation state in jeopardy.

4A.9 LARGER PUBLIC INTEREST

In cases which involves section 8 (1) (i), the public authority may declare information requested but only after taking into account larger public interest into account. For this purpose we first have to understand what really public interest is as per the RTI Act.

4A.10 LARGER PUBLIC INTERESTS IN RTI

The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act.

In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake a public authority should declare the information.

Under section 8 (1) (d) if he thinks that public interest outweigh the interest of other party. While determining public interest he is not supposed to follow very high standards but he should act like a reasonable man while deciding whether to disclose information under this sub section or not.

The decision has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality.

The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity.

Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given due implementation as they spring from statutory exemptions. It is not a decision simplifier between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy.

Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India.

Right to Information Act has proved itself a public safeguard against arbitrary actions of the public authorities. Apart from the above said department/sectors, RTI is widely used for deriving justification and details about the working of the public body, in case there is a possibility of corruption or malpractices by concern body. It is an efficient weapon used for vigilance over the public bodies, and such vigilance can be exercised by the public itself. Therefore, it is a tool in public administration.

Right to Information Act is applicable only to the public authority and to those authorities who are dispensing duties of public nature. Therefore, information which could be derived through RTI act must be of 'larger public interest' and non-disclosure of such information must affect the public in large. Due to this reason, Private authorities are also now being covered under the application of RTI act.

This is only when the information requested from the authority involves a question of public concern, example being disclosure of grounds on which admission is being denied by a private school. The Act, however, carves out some exceptions, including the release of personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the right to privacy In such cases a discretion has been conferred on the concerned Public Information Officer to make available the information, if satisfied, that the larger public interest justifies the disclosure. This discretion must be exercised, bearing in mind the facts of each case and the larger public interest.

4A.11 COPYRIGHTS AND RTI

Section 9 in The Right To Information Act, 2005

Grounds for rejection to access in certain cases.—

Without prejudice to the provisions of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

The right to data is subject to some of the law's limitations. For instance, section 8(1) (d) enables data to be refused if it contains "business trust, trade secrets or intellectual property, the disclosure of which would be detrimental to a third party's competitive position, unless the competent authority is satisfied that the disclosure of such data is justified by greater public interest.

"Similarly, Section 9 enables a competent agency to "dismiss a data application where such an access request would involve an infringement of copyright in persons other than the State." We know that their work is usually' owned' by the inventor of the machine, the author of a book, or the writer of music. Some consequences flow from this ownership, and you've probably been made aware that we can't just copy or purchase a copy of their works without their rights being taken into account.

Similarly, initial industrial designs of furniture, wallpaper, and the like appear to be owned naturally by somebody or organisation. Every time we buy such' protected' items, a portion of what we pay goes back to the owner as a reward for the time, money, effort and thought they put into the work's creation. Over the years, this has led to the growth of sectors such as the music industry globally, encouraging fresh talent to create more and more original thoughts and articles.

Disclosure would damage a third party's competitive position if the disclosure pursuant to Section 8(1) (d) of the RTI Act does not warrant the disclosure of such data in the wider public interest. Further, Section 9 of the RTI Act could be claimed as an exemption from disclosure of information only when such disclosure would infringe copyright subsisting in a person other than the state.

4A.12 CONCLUSION:

The RTI amendment Bill 2013 removes political parties from the ambit of the definition of public authorities and hence from the purview of the RTI Act. The draft provision 2017 which provides for closure of case in case of death of applicant can lead to more attacks on the lives of whistleblowers. The proposed RTI Amendment Act 2018 is aimed at giving the Centre the power to fix the tenures and salaries of state and central information commissioners, which are statutorily protected under the RTI Act. The move will dilute the autonomy and independence of CIC. The Act proposes to replace the fixed 5-year tenure with as much prescribed by the government. One of the major set-back to the act is that poor record-keeping within the bureaucracy results in missing files. There is a lack of staffing to run the information commissions. The supplementary laws like the Whistle Blower's Act are diluted; this reduces the effect of RTI law. Since the government does not proactively publish information in the public domain as envisaged in the act and this leads to an increase in the number of RTI applications. There have been reports of frivolous RTI applications and also the information obtained has been used to blackmail the government authorities.

Different types of information are sought which has no public interest and sometimes can be used to misuse the law and harass the public authorities. For example-Asking for desperate and voluminous information. To attain publicity by filing RTI ,RTI filed as a vindictive tool to harass or pressurize the public authority.Because of illiteracy and unawareness among the majority of the population in the country, the RTI cannot be exercised.Though RTI's aim is not to create a grievance redressal

mechanism, the notices from Information Commissions often spur the public authorities to redress grievances.

The right to privacy and the right to information are both essential human rights in modern society where technological information breach is very common. These two rights complement each other in holding governments accountable to individuals in a majority of the cases.

Right to Information provides a fundamental right for any person to access information held by government bodies. At the same time, the right to privacy laws grants individuals a fundamental right to control the collection of, access to, and use of personal information about them that is held by governments and private bodies.

Some provisions of the Indian Evidence Act (Sections 123, 124, and 162) provide to hold the disclosure of documents. Under these provisions, head of department may refuse to provide information on affairs of state and only swearing that it is a state secret will entitle not to disclose the information. In a similar manner no public officer shall be compelled to disclose communications made to him in official confidence. The Atomic Energy Act, 1912 provides that it shall be an offence to disclose information restricted by the Central Government. The Central Civil Services Act provides a government servant not to communicate or part with any official documents except in accordance with a general or special order of government. The Official Secrets Act, 1923 provides that any government official can mark a document as confidential so as to prevent its publication. The Right to Information Act has not achieved its full objectives due to some impediments created due to systematic failures. It was made to achieve social justice, transparency and to make an accountable government. This law provides us with a priceless opportunity to redesign the processes of governance, particularly at the grassroots level where the Citizens' interface is maximum. It is well recognized that the right to information is necessary, but not sufficient, to improve governance. A lot more needs to be done to usher in accountability in governance, including protection of whistleblowers, decentralization of power and fusion of authority with accountability at all levels.As observed by Delhi High Court that misuse of the RTI Act has to be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act.

Check your progress exercise :

Q.1) Explain concept of **Exemption from disclosure of information**?

Q.2) Explain **Second Scheduled of the Act and Section 24** of The Act?

Q.3) Explain concept of **Larger public interests in RTI**?

Q.4) Explain relation with **Copyrights and RTI**?

Q.5) Explain **about Severance of information**?

Q.6) Explain **Third Party Information and how to Disclose of Third Party Information?**

Q.7) Explain **Information Commissions (CIC/SIC) and Powers and Functions of Information Commissions**?

4A.13 REFERENCES:

- Jaytilak Guha Roy, Right to Information Initiatives and Impact, Indian Institute of Public Administration, New Delhi, 2006.
- Krishna Iyer, V.R., Freedom of Information, Eastern Book Company, Lucknow, 1990.
- Lovekesh Jain, the Information Gleaner: A Practical Guide to the Right to Information in India, Capital Law House, Delhi, 2006.
- Maheswari, S.R,, Open Government in India, Indian Institute of Public Administration, New Delhi, 1981.
- Narayana, P.S. and Reddy, G.B., Freedom of Information and Law, Gogia Law Agency, Hyderabad, 2003.
- Niraj Kumar, Hand Book on Right to Information Act, 2005, Bharat Law House, New Delhi, 2007.
- Right to Information, S.P. Sathe Right to Information Act, 2005, YASHADA, Pune

Annual Report, 2005-2015 of Central information Commission,, Government of India, New Delhi.

4B) Severance of information, Third Party Information

4B.1 SEVERANCE OF INFORMATION

Where a request is received for access to information which is exempt from disclosure but a part of which is not exempt, and such part can be severed in such a way that the severed part does not contain exempt information then, access to that part of the information record may be provided to the applicant. Where access is granted to a part of the record in such a way, the Public information Officer should inform the applicant that the information asked for is exempt from disclosure and that only part of the record is being provided, after severance, which is not exempt from disclosure. While doing so, he should give the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based. The Public Information Officer should take the approval of appropriate authority before supply of information in such a case and should inform the name and designation of the person giving the decision to the applicant also.

4B.2 THIRD PARTY INFORMATION

The word third party is defined in section 11 of the Act. If the information sought by the citizen pertains to a record or part thereof relating to or has been supplied by a third party and if it is not treated as confidential by that third party, the PIO is at liberty to provide the same to the applicant.

If, however such above information is treated as 'confidential' by that third party, **the following steps have to be taken**:

a) PIO has to give a written notice to the third party, within five days of receipt of the application, and convey his intention to disclose the information or record, etc. He also should ask the third party to make a submission regarding whether the information should be disclosed or not.

b) The third party should, within 10 days from the date of receipt of notice from the PIO, has to make a representation against the proposed disclosure,

c) The PIO can, within forty days after the receipt of application for information if the third party has been given an opportunity to make representation, make a decision on disclosure.

d) Third party is entitled to prefer an appeal against the decision of the PIO, except in the case of trade or commercial secrets protected by law, disclosure may be allowed, if the public interest in disclosure outweighs the importance of any possible harm or injury to the interest of such third party.

4B.3 DISCLOSURE OF THIRD PARTY INFORMATION

lnformation including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Such information shall not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

If an applicant seeks any information which relates to or has been supplied by a third party and that third party has treated that information as confidential, the Public lnformation Officer shall consider whether the information should be disclosed or not. The guiding principle in such cases is that except in the case of trade or commercial secrets protected by law. disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. However, the Public lnformation Officer would have to follow the following procedure before disclosing such information.

If the Public lnformation Officer intends to disclose the information, he shall within five days from the receipt of the application, give written notice to the third party that the information has been sought by the applicant under the RTI Act and that he intends to disclose the information. He shall request the third party to make a submission in writing or orally, regarding whether the information may be disclosed. The third party shall be given a time of ten days, from the date of receipt of the notice by him, to make representation against the proposed disclosure, if any.

The Publlc lnformation Officer shall make a decision regarding disclosure of the information keeping in view the submission of the third party. Such a decision should be taken within forty days from the receipt of the request for information. After taking the decision, the Public lnformation Officer should give a notice of his decision to the third party in writing. The notice given to the third party should include a statement that the third party is entitled to prefer an appeal under section 19 against the decision.

The third party can prefer an appeal to the First Appellate Authority against the decision made by the Public lnformation Officer within thirty

days from the date of the receipt of notice. If not satisfied with the decision of the First Appellate Authority, the third party can prefer a second appeal to the lnformation Commission.

If an appeal has been filed by thethird party against the decision of the Public lnformation Officer to disclose the third party information, the information should not be disclosed till the appeal is decided.

4B.4 INFORMATION COMMISSIONS (CIC/SIC)

The Central Government shall, by a notification in the official gazette, constitute a body to be known as the Central Information Commission (CIC). Every state government shall similarly constitute a body called the State Information Commission (SIC),each of these commissions will consist of the Chief Information Commissioner and such number of information Commissioners not exceeding ten, as may be deemed necessary The Chief Information Commissioner and the Information Commissioners of the Centre shall be appointed by the President on the recommendations of a committee consisting of (i) the Prime Minister (PM), who shall be the Chairman of the Committee; (ii) Leader of the opposition in the Lock Sabha; and (iii) a Union Cabinet minister to be nominated by the PM.The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of (i) the Chief Minister (CM), who shall be the Chairman of the Committee; (ii) the leader of the opposition in the Legislative Assembly, and a cabinet minister to be appointed by the CM. For the purpose of removal of doubt, it is provided that where the leader of the opposition is not recognized as such, either in the Lok Sabha or in the state assembly; the leader of the single largest group in opposition to the Government in the House shall be deemed to be the leader of the opposition.

The general superintendence, direction and management of the affairs of the CIC and the SIC shall vest in their respective Chief Information commissioner, who shall be assisted by the information Commissioners, who may exercise such powers and do all such acts and things which may be exercised or done by the CIC or the SIC, as the case may be autonomously, without being subjected to directions by any other authority under the Act. The Chief Information Commissioner and the Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

The Chief Information Commissioner shall not be a member of Parliament or of a state legislature or legislature of a Union territory, or shall not hold any office of profit or be connected with any political party or be carrying on any business or pursuing any profession. The position of Information Commissioners is very high; Their headquarters is at New Delhi or the State capitals, depending on whether it is Central or State Information Commission. Despite the above, the Information Commissioners may be

always on the move, if the Act is to be implemented both in letter and spirit. The Information Commissioners may be like roving ambassadors to see for themselves how the provisions of the Act are getting implemented at various levels like state, district, and village.

The Chief Information Commissioner shall hold office for five years from the date on which he enters upon his office and shall not be eligible for reappointment. No person shall work as Chief Information Commissioner after he attains the age of 65 years. Every Information officer shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of 65 years as such Information Commissioner.

The salaries and allowances payable to and conditions of service of the Chief Information Commissioner shall be the same as that of an Election Commissioner; and those of the Information Commissioners.

The salaries and allowance payable to and conditions of service of the State Chief Information Commissioner shall be the same as those of the Election Commissioners and of the State Information Commissioners shall be the same as those of the Chief Secretary to the State government.

Though it is for the concerned Government to give appropriate operational and budgetary autonomy to the State or Central Information Commission (as the case may be), the public authority needs to gear itself to provide all required support to the Information Commission.

Among other things, to enable the Commission to arrive at consistent decisions, the public authority's information base has to be comprehensive, in easily retrievable form and also in a format which is understandable. The setting up of the Information Commission, its location and composition, contact details, etc. may all be put on the web sites by the concerned Government. In addition, such information may also be disseminated to all public authorities, starting from the village level to the state level.

4B.5 POWERS AND FUNCTIONS OF INFORMATION COMMISSIONS

The Central Information Commission or State Information Commission, has a duty to receive complaints from any person who has been unable to submit a request to a Central Public Information Officer or State Public Information Officers, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified or the Central Information Commission or the State Information Commission, as the case may be; b) who has been refused access to any information requested under this Act; c) who has not

been given a response to a request for information or access to information within the time limit specified under this Act; d) who has been required to pay an amount of fee which he or she considers unreasonable; e) who believes that he or she has been given incomplete, misleading or false information under this Act; and f) in respect of any other matter relating to requesting or obtaining access to records under this Act. For the purposes of discharging its duties, the Information Commissions have been vested with the following powers:

1) Power to Conduct Inquiry: If the Information Commission is satisfied that there are reasonable grounds to inquire into the matter who has been refused access to any information requested under this Act, it may initiate an inquiry in respect thereof.

2) Powers of Civil Court: The Information Commission shall have the same powers such as requiring discovery and inspection of documents etc., which are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908.

3) Power to Requisition Records: The Information Commission while making the inquiry of any complaint under this Act, requisition all records covered under this law, including those covered by exemptions.

4) Powers in Deciding an Appeal: While making a decision on an appeal, the Information Commission can exercise certain powers, a) To require the public authority with a view to secure compliance with the provisions of this Act, including - i) providing access to information, if Section 18(1) Central Information Commission or State Information Commission has powers in Respect of the following matters, namely:

    a) Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

    b) Requiring the discovery and inspection of documents;

    c) Receiving evidence on affidavit;

    d) Requisitioning any public record or copies thereof from any court or office;

    e) Misusing summons for examination of witnesses or documents; and

    f) Any other matter which may be prescribed. (Section 18 (3) i)so requested, in a particular form; ii) appointing a Central Public Information Officer or State Public Information Officer, as the case may be; iii) publishing certain information or categories of information; iv) making necessary changes to its practices in relation to the maintenance, management and destruction of records; v) enhancing the provision of training

on the right to information for its officials; iv) providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4; b) To require the public authority to compensate the complainant for any loss or other detriment suffered, c) To impose any of the penalties provided under this Act and d) To reject the application 5) Power to impose penalty Minimum Rs.250 maximum Rs.25000: Section 20 -If the Information Commission comes to the view that the PIO has a) reflised to receive an application without any reasonable cause, or b)has not furnished information within the specified time, or c)has given incorrect, incomplete, or misleading information knowingly, or d)destroyed the information which was sought, or e)obstructed in any manner in furnishing information, he can impose a penalty. The Information Commission may also recommend disciplinary action against the PIO, under the service rules applicable to him.The burden to prove that CIO/SIO acted reasonably and diligently, shall lie upon him. Such recommendation is given only if Information Commission is of the opinion that the PIO has, without any reasonable cause, and persistently, failed to receive an application or has not furnished information within specified time or knowingly given incorrect, incomplete or misleading information or destroyed information.

6) Power to make recommendations: If it appears to the Information Commission that the practice of a public authority in relation to the exercise of its functions under this law does not confirm with the provisions or spirit of the law, it may recommend the steps, which in its opinion, ought to be taken by the public authority for promoting such conformity.

4.6 FIRST APPELLATE AUTHORITY

The public authority also has an important function of appointing Appellate Authority. If an applicant is aggrieved by the actions of the PIO, he or she can make an appeal to the Appellate Authority. This Authority is an officer senior in rank to the PIO. It also needs to provide necessary support to them in taking consistent decisions. The public authority could also help the Appellate Authority in discharge of their duties under the Act by developing guidance notes, process, manuals, etc. The number of Appellate Authorities could be smaller as compared to the number of PIOs. An Appellate Authority could easily meet the requirement of a number of PIOs and facilitate the discharge of their duties under the Act. Keeping in mind the nature of responsibility assigned under the Act and the structure of the organization itself, each and every public authority has to determine the number of senior officers to be designated as Appellate Authorities and also the levels at which they are identified and designated as such.

An Appellate Authority receives an appeal from the citizen, who has not received decision within the stipulated time limit of thirty days specified under the Act (supply of the requisite information or rejection). Who is not convinced with the quantum of fees fixed for supplying the information Who has received incomplete information Within thirty days from the date on which the above has occurred. The Act sets the time limit of forty eight hours for request for information concerning the life or liberty of a person. However, the procedure for appeal along with time limits have not separately been spelt out for such cases. The Appellate Authority has the power to condone the delay and admit such an appeal even after the expiry of thirty days, if he is satisfied with the reasons for delay in preferring the appeal by the citizen. In the event of a citizen preferring a second appeal against the decision of the Appellate Authority, to the concerned Information Commission (Central or State Government, as the case may be), the Appellate Authority should provide necessary material for use by the Information Commission.

4B.7 OVERRIDING EFFECT OF THE ACT

It is provided that the provisions of this Act shall have effect Not withstanding anything inconsistent contained in the Official Secrets Act 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than the Right to Information Act. This is indeed a very courageous provision, which will help the Right to Information Act override all the secrecy providing protecting or secrecy enforcing laws in existence,

4B.8 IMMUNITY FROM LEGAL ACTION AND EXCLUSION OF COURTS

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made under it. It is further provided that no court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act. This of course does not affect the power of the High Court to entertain petitions under art 226 of the Constitution. Several questions of law are likely to come up and the High Courts and even the Supreme Court may have to give authentic rulings on them.

Section 21. The appropriate government/competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of the Act. (Section 27 (1) and Section 28 (1)) Rules made by the appropriate Government shall, as soon as possible, be placed before the appropriate Legislature. (Section 29 of the Act.)

4B.9 REPORTOF INFORMATION COMMISSIONS

The Central Information Commission or State Information Commission, shall, as soon as practicable after the end of each year, prepare a report ^'^ on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate government as the case may be.

The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House, The CIC has submitted its first Report of 2005-2006 with many recommendations to the Government of India. It is opined that such reports of the CIC / SIC shall become available to the public so that a proper public scrutiny of the working of the Act could be possible.

Section 25 (1): The Annua! Report shall contain the details as to Section 25 (3)

i) The number of requests made to each public authority;

ii) The number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;

iii) The number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;

iv) Particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

v) The amount of charges collected by each public authority under this Act;

vi) Facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

vii) Recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalizing the right to access information.

4B.10 EDUCATIONAL PROGRAMMES

The appropriate Government may, to the extent of availability of financial and other resources: a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act; b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves; c) promote timely and effective dissemination of accurate information by public authorities about their activities; and d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities OR themselves.

While the Act requires both the Centre as well as the States, to be pro-active in providing transparency in governance, the civil society organizations will have to constantly educate the people, and intervene on behalf of the people to ensure that proper information is provided. An activist state and a vigilant civil society must act at tandem to make this Act successful.

The legislation giving effect to the people a right to information has now been enacted after a long struggle waged by the people. It doubtless empowers the people and is a source of political education. Its vigorous implementation will definitely make Indian democracy vibrant. There is a paradigm shift from secrecy to transparency with the passage of Right to Information Act, 2005. The public is supreme and so is their interest. Public interest is more important than private interest.

Only such Information which could lead to unwarranted invasion of the privacy of the individual may be denied by the PIO. Over all, if the disclosure to citizens outweighs the harm to the protected interest, then he may provide Information and not reject the request. Implementation of the Act would lead to less paper office situation. It is expected that corruption would be curbed and transparency would be more and efficiency and effectiveness of the government system would enhance. It needs to be noted that the Right to Information Act is in tune with the provisions of some of the more evolved democracies of the world, to have enacted such a law in an effort towards deepening democracy.

Right to Information Act is an important legislation that provides opportunities to civil society organizations to be involved in governance and social transformation process by using the Act as a weapon to monitor, review and evaluate government policies, programmes and schemes. They can infuse greater transparency and accountability in administration of developmental programmes and arrest the abuse of power and misuse of public resources with the help of the Act.

4B.11 CONCLUSION:

The RTI amendment Bill 2013 removes political parties from the ambit of the definition of public authorities and hence from the purview of the RTI Act. The draft provision 2017 which provides for closure of case in case of death of applicant can lead to more attacks on the lives of whistleblowers. The proposed RTI Amendment Act 2018 is aimed at giving the Centre the power to fix the tenures and salaries of state and central information commissioners, which are statutorily protected under the RTI Act. The move will dilute the autonomy and independence of CIC. The Act proposes to replace the fixed 5-year tenure with as much prescribed by the government. One of the major set-back to the act is that poor record-keeping within the bureaucracy results in missing files. There is a lack of staffing to run the information commissions. The supplementary laws like the Whistle Blower's Act are diluted, this reduces the effect of RTI law. Since the government does not proactively publish information in the public domain as envisaged in the act and this leads to an increase in the number of RTI applications. There have been reports of frivolous RTI applications and also the information obtained has been used to blackmail the government authorities.

Different types of information are sought which has no public interest and sometimes can be used to misuse the law and harass the public authorities. For example-Asking for desperate and voluminous information. To attain publicity by filing RTI,RTI filed as a vindictive tool to harass or pressurize the public authority.Because of illiteracy and unawareness among the majority of the population in the country, the RTI cannot be exercised.Though RTI's aim is not to create a grievance redressal mechanism, the notices from Information Commissions often spur the public authorities to redress grievances.

The right to privacy and the right to information are both essential human rights in modern society where technological information breach is very common. These two rights complement each other in holding governments accountable to individuals in a majority of the cases.

Right to Information provides a fundamental right for any person to access information held by government bodies. At the same time, the right to privacy laws grants individuals a fundamental right to control the collection of, access to, and use of personal information about them that is held by governments and private bodies.

Some provisions of the Indian Evidence Act (Sections 123, 124, and 162) provide to hold the disclosure of documents. Under these provisions, head of department may refuse to provide information on affairs of state and only swearing that it is a state secret will entitle not to disclose the information. In a similar manner no public officer shall be compelled to disclose communications made to him in official confidence. The Atomic Energy Act, 1912 provides that it shall be an offence to disclose information restricted by the Central Government. The Central Civil Services Act provides a government servant not to communicate or part

with any official documents except in accordance with a general or special order of government. The Official Secrets Act, 1923 provides that any government official can mark a document as confidential so as to prevent its publication. The Right to Information Act has not achieved its full objectives due to some impediments created due to systematic failures. It was made to achieve social justice, transparency and to make an accountable government. This law provides us with a priceless opportunity to redesign the processes of governance, particularly at the grassroots level where the citizens' interface is maximum. It is well recognized that the right to information is necessary, but not sufficient, to improve governance. A lot more needs to be done to usher in accountability in governance, including protection of whistleblowers, decentralization of power and fusion of authority with accountability at all levels.As observed by Delhi High Court that misuse of the RTI Act has to be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act.

Check your progress exercise:

Q.1) Explain concept of **Exemption from disclosure of information**?
Q.2) Explain **Second Scheduled of the Act and Section 24** of The Act?
Q.3) Explain concept of **Larger public interests in RTI**?
Q.4) Explain relation with **Copyrights and RTI?**
Q.5) Explain **about Severance of information**?
Q.6) Explain **Third Party Information and how to Disclose of Third Party Information**?
Q.7) Explain **Information Commissions (CIC/SIC) and Powers and Functions of Information Commissions**?

4B.12 REFERENCES:

- Jaytilak Guha Roy, Right to Information Initiatives and Impact, Indian Institute of Public Administration, New Delhi, 2006.
- Krishna Iyer, V.R., Freedom of Information, Eastern Book Company, Lucknow, 1990.
- Lovekesh Jain, The Information Gleaner: A Practical Guide to the Right to Information in India, Capital Law House, Delhi, 2006.
- Maheswari, S.R., Open Government in India, Indian Institute of Public Administration, New Delhi, 1981.
- Narayana, P.S. and Reddy, G.B., Freedom of Information and Law, Gogia Law Agency, Hyderabad, 2003.
- Niraj Kumar, Hand Book on Right to Information Act, 2005, Bharat Law House, New Delhi, 2007.
- Right to Information, S.P. Sathe Right to Information Act, 2005, YASHADA, Pune

Annual Report, 2005-2015 of Central information Commission,, Government of India, New Delh.

4. C) 1) WHISTLEBLOWER ACT, 2) RIGHT TO HEARING, 3)GRIEVANCE REDRESSAL BILL, 4)RIGHT TO PUBLIC SERVICES.

4C.1 OBJECTIVES:

- To understand **Whistleblower Act**
- To understand **Right to Hearing**
- To understand **Grievance Redressal Bill**
- To understand **Right to Public Services**.

4C.2 INTRODUCATION

4C.1. Whistleblower Act:

4C.1.1.Introduction:

Whistle Blowing and Right to Information The right to information is derived as stated earlier from the arena of the fundamental rights under Article 19(l) (a) of the Constitution of India. The right to freedom of expression and speech copes with the principle of receiving and sharing of information. If one advances towards the provisions of Article 2 then the derivative right that is right to know also comes from it.

Article 19 (2) empowers the State to formulate law, if such law imposes the reasonable restrictions in matter of exercise of the rights envisaged under Article 19(l) (a) in the scope of integrity and sovereignty of India. In this respect the legal recognition to whistle blowing is a matter of importance. The Law Commission of India's 179 Report in 2001 includes the necessity of the whistle blowing. It also recommended for an Act through a proposed bill on "Public Interest Disclosure and Protection of Informers". The Supreme Court in the case of Vineet Narain V. Union of India, which is based on the Public Interest Litigation and Judiciary enforcing rule of law, held that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and therefore, the office held by them is in trust for the people. Any deviation from the path of rectitude by any of them amounts to breach of trust and must be

severely dealt with, instead of being pushed under the carpet. If the conduct amounts to an offence it must be promptly investigated and the offender against whom a prima facie case is made out should be presented expeditiously, so that the validity of law is upheld and the rule of law is vindicated. It is the duty of the judiciary to enforce the rule of law and therefore to guard against erosion of the rule of law.

Moreover, the whistle blowers can also play a very important role in providing information about corruption and maladministration. Public servants working in the same department know better as to who is corrupt in their departments, but unfortunately, they are not bold enough to convey the said information to higher authorities for fear of reprisals by those against whom complaints are made. If adequate statutory protections are granted, there can be no doubt, that the government will be able to get rid of maladministration. Such provisions exist in England, Australia, and New Zealand and in the United States of America. Good faith Whistle blowers represent the highest ideals of public service and challenge abuse of power. Protection of whistle blowing vindicates important interest supporting the enforcement of criminal and civil laws. This aspect may be called the 'rule of law' concept implied in whistle blowing.

Again, whistle blowing can be seen as supporting public interest by encouraging disclosures of certain type of information. This aspect can be called the 'public information' or public interest concept implied in whistle blowing.

The Law Commission of India basing on experience and provisions of the Public Interest Disclosure Acts of different countries and contemporary need of India, proposed the Public Interest Disclosure (Protection of Informers) Bill, 2002 in its 179th Report of 2001. It also proposed to apply this Act to public servants outside India. In clause 2(e) the word "disclosure" is defined as a disclosure of information that the person making the disclosure reasonably believes that it tends to show disc losable conduct. Besides other provisions, the provisions were also made for report on disclosure, period of limitation, powers of competent authority, procedure on receipt of public interest disclosure, procedure of inquiry, public interest disclosure, victimizations, ministers, public servant, maladministration, disclosable conduct, safeguards against victimization, protection of witnesses and punishment for false or frivolous disclosures, etc. The State governments were also empowered to make rules for their respective States.

The passing of the Public Interest Disclosure (Protection of Informers) Act is need for India to serve the dual purpose of checking corruption and gathering of information against corrupt public servants. The full-fledged law should be enacted on this subject because India is also in need of an arena beyond the Right to Information Act, 2005.

4C.1.2. Background of the Whistleblower Act,

- Whistleblowing is defined as an act of disclosing information by an employee or any concerned stakeholder about an illegal or unethical

conduct within an organization. A whistleblower is a person who informs about a person or organization engaged in such illicit activity.

The Law Commission of India in 2001, had recommended that, in order to eliminate corruption, a law to protect whistleblowers was necessary. It had drafted a bill as well to address this issue.

- The Supreme Court of India

In 2004, in response to a petition filed after the infamous murder of NHAI Official, the Supreme Court of India directed the Central government that, 'administrative machinery be put in place for acting on complaints from whistleblowers till a law is enacted.' The government, in response, notified a resolution in 2004 named, 'Public Interest Disclosure and Protection of Informers Resolution (PIDPIR)'. This resolution gave the Central Vigilance Commission (CVC) the power to act on complaints from whistleblowers.

- The Second Administrative Reforms Commission

4560 In 2007, the report of the Second Administrative Reforms Commission also recommended that a specific law needs to be enacted to protect whistleblowers. The UN Convention against Corruption to which India is a signatory (although not ratified) since 2005, encourages states to facilitate reporting of corruption by public officials and provide protection for witnesses and experts against retaliation. The Convention also provides safeguards against victimization of the person making the complaint. To conform with such regulations, in 2011 Whistleblowers Protection Bill was proposed which finally became a law in 2014. The Companies Act, 2013, as well as the Securities and Exchange Board of India regulations have made it mandatory for companies to take notice of all such complaints.

4C.1.3. Key Highlights of Whistleblower Protection Act, 2014

- The act establishes a mechanism to receive complaints related to disclosure of allegations of corruption or wilful misuse of power or discretion, against any public servant, and to inquire or cause an inquiry into such disclosure. The act also provides adequate safeguards against victimization of the person making such complaints.

- It allows any person, including a public servant, to make a public interest disclosure before a Competent Authority. The law has elaborately defined various competent authorities. For instance, Competent authority to complaint against any union minister is the Prime Minister.

- The law does not allow anonymous complaints to be made and clearly states that no action will be taken by competent authority if

the complainant does not establish his/her identity. The maximum time period for making a complaint is seven years.

- Exemptions: The act is not applicable to the armed forces of the Union and the Special Protection Group (SPG) personnel and officers, constituted under the Special Protection Group Act, 1988.

- Court of Appeal: Any person aggrieved by any order of the Competent Authority can make an appeal to the concerned High Court within a period of sixty days from the date of the order.

- Penalty: Any person who negligently or mala-fidely reveals the identity of a complainant will be punishable with imprisonment for a term extending up to 3 years and a fine which may extend up to Rs 50,000. If the disclosure is done mala-fidely and knowingly that it was incorrect or false or misleading, the person will be punishable with imprisonment for a term extending up to 2 years and a fine extending up to Rs. 30,000.

- Annual Report: The Competent Authority prepares a consolidated annual report of the performance of its activities and submits it to the Central or State Government that will be further laid before each House of Parliament or State Legislature, as the case may be.

- The Whistleblowers Act overrides the Official Secrets Act, 1923 and allows the complainant to make public interest disclosure before competent authority even if they are violative of the later act but not harming the sovereignty of the nation. In 2015, an amendment bill was moved that proposes, whistleblowers must not be allowed to reveal any documents classified under the Official Secrets Act of 1923 even if the purpose is to disclose acts of corruption, misuse of power or criminal activities. This dilutes the very existence of the 2014 Act.

4C.1.4. Way Forward

Suitable legislation must be enacted to provide protection to innocent whistleblowers and the dilution of the act that is proposed by the 2015 Amendment Bill must be abandoned. Strengthening of the whistleblower protection mechanism will help in ensuring that the integrity of democracy is protected, cherished and upheld.

4C.2. RIGHT TO HEARING

RIGHT TO HEARING ACT, 2012

To provide the right of hearing to the people within stipulated time limits and to provide for the matters connected therewith andincidental thereto.
Be enacted by the Rajasthan State Legislature in the Sixty- third Year of the Republic of India, received the assent of the Governor o f Rajasthanon the 21st day of May, 2012 *an act* as follows:-

4C.2.1 Short title, extent and commencement. –

(1) This Act may be called the Rajasthan Right to Hearing Act, 2012.

(2)It shall extend to the whole of the State of Rajasthan.

(3)It shall come into force on such date, as the StateGovernment may, by notification in Official Gazette, appoint.

4C.2.2 Definition. - In this Act, unless the context otherwiserequires,-

(a) "complaint" means any application made by a citizen or a group of citizens to a Public Hearing Officer for seeking any benefit or relief relating to any policy, programme or scheme run in the State by the State Government or the Central Government, or in respect of failure or delay in providing such benefit or relief, or regarding any matter arising out of failure in the functioning of, or violation of any law, policy, order, programme or scheme in force in the State by, a public authority but does not include grievance relating to the service matters of a public servant, whether serving or retired, or relating to any matter in which any Court or Tribunal has jurisdiction orrelating to any matter under Right to Information Act, 2005(Central Act No. 22 of 2005) or services notified under the Rajasthan Guaranteed Delivery of Public Services Act, 2011 (Act No. 23 of 2011);

(b) "right to hearing" means an opportunity of hearing provided to the citizens on a complaint within the stipulated time limit and right to get information about the decision made in the hearing on the complaint ;

(c) "Public Hearing Officer" means a Public Hearing Officer notified under section 3;

(d) "Information and Facilitation Centre" means an Information and Facilitation Centre, including customer care centre, call centre, help desk andpeople's support centre established under section 5;

(e) "public authority" means the State Government and its departments and includes any authority or body or institution established or constituted by or under any law made by the State Legislature and owned, controlled or substantially financed,directly or indirectly, by the funds provided by the State Government

(f) "First appellate authority" means an officer or authority notified as such under section 3;

(g) "Second appellate authority" means an officer or authority notified as such under section 3;

(h) "stipulated time limit" means the maximum time allowed to Public Hearing Officer for providing an opportunity of hearing on a complaint, or to the first appellate authority or the second appellate authority for deciding an appeal, or to the aforesaid authorities for

informing the complainant or appellant, as the case may be, of the decision on such complaint or appeal, as the case may be;

(i) "Days" means the working days, referred to as time limit;

(j) "Decision" means a decision taken on a complaint or appeal or revision by the Public Hearing Officer or appellate authority or revision authority notified under this Act and includes the information sentto the complainant or the appellant, as the case may be;

(k) "Prescribed" means prescribed by the rules made under this Act; and

(l) "State Government" means the Government of Rajasthan.

4C.2.3 Notification of Public Hearing Officers, first appellate authority, second appellate authority and revision authority and stipulated time limit. - The State Government may notify from time to time, the Public Hearing Officer, first appellateauthority, second appellate authority and revision authority and stipulated time limits.

4C.2.4 Right to get opportunity of hearing on complaint within the stipulated time limit.-

(1) The Public Hearing Officer shall provide an opportunity of hearing on a complaint filed under this Act within the stipulated time limit.

(2) The Public Hearing Officer may seek the assistance of any other officer or employee as he considers it necessary for the proper discharge of his duties under sub-section (1).

(3) Any officer or employee, whose assistance has been sought under sub-section (2), shall render all assistance to the Public Hearing Officer seeking his assistance and for the purposes of any contravention of the provisions of this Act, such other officer or employee, as the case may be, shall be treated a Public Hearing Officer.

(4) The stipulated time limit shall start from the date whena complaint is filed to the Public Hearing Officer or to a person authorized by him to receive the complaints. Receipt of a complaint shall be duly acknowledged.

(5) The Public Hearing Officer on receipt of a complaint under sub-section (1) shall, within the stipulated time limit, provide an opportunity of hearing to the complainant and after hearing the complainant, decide the complaint either by accepting it or by referring it to an authority competent to grant the benefit or relief sought for or by suggesting an alternative benefit or relief available under any other law, policy, order, programme or scheme or by rejecting it for the reasons to be recorded in writing and shall communicate his decision on the complaint to the complainant within the stipulated time limit.

(1) For the purposes of the efficient and effective redressal of grievance of the people and to receive complaints under this Act, the State Government shall establish Information and Facilitation Centres which may include establishment of customer care centres, call centres, help desks and people's support centres.

The State Government may, by notification, make rules in relation to Information and Facilitation Centers.

(2) Every public authority shall be responsible for the development, improvement, modernization and reform in redressal of grievance system including redressal of grievance through information technology.

4C.2.6. Appeal. –

(1) Any person who is not provided an opportunity of hearing within the stipulated time limit or who is aggrieved by the decision of the Public Hearing Officer may file an appeal to the first appellate authority within thirty days from the expiry of the stipulated time limit or from the date of the decision of the Public Hearing Officer:

Provided that the first appellate authority may admit the appeal after the expiry of the period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) If the Public Hearing Officer does not comply with the provision of section 4, any person aggrieved by such non- compliance may submit complaint directly to the first appellate authority which shall be disposed of in the manner of a first appeal.

(3) The first appellate authority may order the Public Hearing Officer to provide the opportunity of hearing to the complainant within the period specified by it or may reject the appeal.

(4) A second appeal against the decision of the first appellate authority shall lie to the second appellate authority withinthirty days from the date of the decision of the first appellateauthority:

Provided that the second appellate authority may admit the appeal after the expiry of the period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(5) An aggrieved person may file an appeal directly to the second appellate authority, if the Public Hearing Officer does not comply with the order of first appellate authority under sub-section or the first appellate authority does not dispose of the appeal within the stipulated time limits which shall be disposed of in the manner of a second appeal.

(6) The second appellate authority may order the Public Hearing Officer or the first appellate authority to provide an opportunity of hearing to the complainant or dispose of the appeal, as the case may be, within the period specified by it or may reject the appeal.

(7) Along with the order to provide an opportunity of hearing to the complainant, the second appellate authority may impose a penalty on Public Hearing Officer in accordance with the provisions of section 7.

(8) The first appellate authority and second appellate authority shall, while deciding an appeal under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908) in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Discovery and production of any document or other material object producible as evidence;

(c) Receiving evidence on affidavits;

(d) Requisitioning of any public record;

(e) Issuing commission for the examination of witnesses;

Reviewing its decisions, directions and orders; and/or any other matter which may be prescribed.

4C.2.7 Penalty.-

(1) Where the second appellate authority is of the opinion that the Public Hearing Officer has failed to provide an opportunity of hearing within the stipulated time limit without sufficient and reasonable cause, it may impose on him a penalty which shall not be less than five hundred rupees but which shall not exceed five thousand rupees:

Provided that before imposing any penalty under this sub- section, the person on whom penalty is proposed to be imposed shall be given a reasonable opportunity of being heard.

(2) The penalty imposed by the second appellate authority under sub-section (1) shall be recoverable from the salary of the Public Hearing Officer.

(3) The second appellate authority, if it is satisfied that the Public Hearing Officer or the first appellate authority has failed to discharge the duties assigned to him under this Act, without assigning sufficient and reasonable cause, may recommend action against him under the service rules applicable to him.

4C.2.8 Revision. - The Public Hearing Officer or first appellate authority aggrieved by an order of the second appellate authority in respect of imposing of penalty under this Act may make an application for revision to the officer or authority nominated by the State Government within a period of sixty days from the date of that order. The nominated officer or authority shall dispose of the application in accordance with the prescribed procedure:

Provided that the officer or authority nominated by the State Government may entertain an application after the expiry of the said period of sixty days, if he is satisfied that the applicant was prevented by sufficient cause from filing the appeal in time.

4C.2.9 Protection of action taken in good faith. - No suit, prosecution or other legal proceedings shall lie against any person for anything which is done or intended to be done in good faith under this Act or any rules made thereunder.

4C.2.10 Bar of jurisdiction of courts - No civil court shall have jurisdiction to hear, decide or deal with any question or to determine any matter which is by or under this Act required to be heard, decided or dealt with or to be determined by the Public Hearing Officer, first appellate authority, second appellate authority or the officer nominated by the State Government.

4C.2.11 Provisions to be in addition to existing laws. - The provisions of this Act shall in addition to, and not in derogation of, any other law for the time being in force.

4C.2.12 Power to make rules.-

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) All rules made under this section shall be laid, as soon as may be, after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days, which may be comprised in one session or in two successive sessions and if before the expiry of the session in which they are so laid or of the session immediately following, the House of the State Legislature makes any modification in any such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

4C.2.13 Removal of difficulties -

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by an order published in the Official Gazette do

anything, not inconsistent with the provisions of this Act, which appears to itto be necessary or expedient for removing the difficulty:

Provided that no order under this section shall be made after the expiry of two years from the commencement of this Act.

Every order made under this section shall be laid, as soon as may be, after it is so made, before the House of the State Legislature.

4C.3 GRIEVANCE REDRESSAL BILL

Right of Citizens for Time Bound Delivery of Goods and Services and Redressed of their Grievances Bill, 2011.

4C.3.1 Introduction

The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 (henceforth referred to as the GR bill) was introduced in the Lok Sabha in December 2011. The bill, which is currently being debated in a Parliamentary standing committee, seeks to entitle citizens to time bound delivery of goods and provision for services and sets out a mechanism for redressal of grievances. The term *'service'* has been broadly defined to include "all the goods and services, including functions, obligations, responsibility or duty, to be provided or rendered by a public authority". At the core of the bill is a mandatory provision that every public authority publish a Citizens' Charter within six months of the enforcement of the Act.

4C.3.2 Highlight of Bill

- Recognizes citizen's right to time bound delivery of goods and provision for services and redressal of grievances.
- Imparts a statutory character to Citizens Charters by requiring public authorities to publish Citizens Charter within six months of the Act coming in to force.
- Requires public authorities to establish information and facilitation centers for effective delivery of service, and to appoint Grievance Redress Officers (GROs) at Central, State, district and sub-district levels. GROs are also to be appointed at the local government level (municipalities and Panchayats). These officers are to be appointed within six months of the Act coming in to force.
- puts in place an appeal system. Accordingly, citizens can place an appeal against the decision of a GRO to a Designated Authority (DA). The appeal must be disposed of within 30 days. To ensure independent adjudication of appeals, the Act also mandates the setting up of public grievance redressal commissions at the State and Central level (SPGRC/CPGRC). Accordingly, an appeal against the decision of the DA can be filed with the SGPRC/CGPRC. The appeal must be disposed of within 60 days. The orders of the

SPGRC/CPGRC can be appealed against before the Lokayukta/Lokpal.

- Introduces a system of penalties. The DA and the Commissions can impose a lump sum penalty against the official responsible for failure to deliver goods and services up to a maximum of Rs 50,000. They can also direct that a portion of the penalty be paid as compensation to the appellant.

- Empowers the DA and the State/Central Public Grievance Redressal Commission to refer matters where this is prima facie evidence of corruption as defined by the Prevention of Corruption Act, 1988 to appropriate authorities.

This bill was tabled in the wake of the public force and over the Lok Pal Bill in 2011. It forms a critical part of the wider institutional mechanisms being developed to address corruption and is likely to have far reaching consequences on citizens' day to day interactions with government. However, unlike the Lok Pal, this bill has received scant attention and public debate andanalysis on the grievance redressal mechanism proposed has been limited. This brief aims to address this gap through an analysis of some of the key features of this bill. This brief is structured as follows: each section begins with a overview of the central features of the Act. This overview is followed by an analysis of the implications and questions that the proposed structure throws up

4C.3. 3.Scope

4C.3.3.1 What is a "complaint" under the Bill?

The Bill defines "complaint" to mean "a complaint filed by a citizen regarding any grievance relating to or arising out of, any failure in the delivery of goods or rendering of service pursuant to the Citizens Charter, or in the functioning of a public authority, or any violation of any law, policy, programme, order or scheme but does not include grievance relating to the service matters of a public servant whether serving or retired".

4C.3.3. 2.Who comes within the purview of the Bill?

The Bill imposes the obligation of time bound delivery of goods and services upon a "publicauthority" which has been broadly cast to mean:

> "Any authority or body or institution of self-government established or constituted,-

(i) by or under the Constitution;
(ii) by any other law made by Parliament;
(iii) by any other law made by State Legislature;
(iv) by notification issued or order made by the appropriate Government, and includes any,

(A) Body owned, controlled or substantially financed;

This definition of a complaint is significantly broader in scope than current laws that have a similar objective to the GR Bill - entitling citizens to time bound delivery of services and grievance redress2. The current Bill broadens the definition of a complaint to enable citizens to access the grievance redress mechanism for grievances related to the broad functioning of the public authority.

- Grounds on the basis of which complaints can be rejected not specified: While the bill clearly lays out the scope of a complaint, it does not specify the grounds on which a complaint can be rejected. This is necessary in order to avoid arbitrariness in the admission and rejection of complaints.

4C.3.2.4 Who comes within the purview of the Bill?

The Bill imposes the obligation of time bound delivery of goods and services upon a "public authority" which has been broadly cast to mean:

"any authority or body or institution of self-government established or constituted,-

(v) by or under the Constitution;
(vi) by any other law made by Parliament;
(vii) by any other law made by State Legislature;
(viii) by notification issued or order made by the appropriate Government, and includes any,
(A) body owned, controlled or substantially financed;

(a) non-government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;
(b) an organization or body corporate in its capacity as an instrumentality of 'State' as defined under Article 12 of the Constitution and rendering services of public utility in India;
(c) a Government company as defined under section 617 of the Companies Act, 1956;
(d) any other company which supply goods or render services in pursuance of an obligation imposed under any Central or State Act or under any licence or authorisation under any law for the time being in force or by the Central or State Government;
(ii) by an agreement or memorandum of understanding between the Government and any private entity as Public-Private Partnership or otherwise;

Specific obligations have been placed upon public authorities and their Heads of Department which have been listed in the table below. The Head of the Department has been defined to mean "an officer designated as such by the appropriate government, as the head of a Government Department or public authority"

4C.3.2.3 Obligattions of Public Authority and Head of Department

Obligations of Public Authority and Head of the Department	
Public Authority	• Publish Citizens Charter • Establish Information & Facilitation Centre • Appoint or designate Grievance Redress Officers (GROs) • Disseminate details about GROs at its office, Information and Facilitation Centre, call center, customer care center, etc. • Ensure that GRO maintains record of complaints and appeals and decisions. • Publish on its website by 15th of every month or at shorter intervals, a report containing details of total complaints received, pending, and disposed.
Head of the Department	• Update and verify the contents of the Citizens Charter on an annual basis. • Ensure that the Citizens Charter is widely disseminated for free of cost and is also made available on the website of the public authority. • Submit certified copies of the Charter including updated
	Or modified versions to appropriate bodies including the Central and State Public Grievance Redress Commissions. • Take responsibility for "development, improvement, modernization and reform in service delivery and Redressal of grievance system."

4C.3.**2.4.Standard and norms against which complaints are made**

As stated earlier, non-compliance with the Citizens Charter can be the basis of complaints before the authorities under the Bill. Every public authority across all levels of government is expected to develop this charter. According to the Bill, a Citizens Charter has been defined as "a

document declaring the functioning, obligations, and duties, commitments of a public authority for providing goods and services effectively and efficiently with acceptable levels of standards, time limits and designation of public servants for delivery and grievance redress…" The Bill specifies that the Citizens Charter should contain:

- Information about the goods supplied and the services rendered,
- The name and address of the agency and person responsible for providing it, Time frame within which services are provided,
- Conditions for entitlement, quantitative and tangible parameters, and the complaintredressal mechanism.

Importantly, the absence of a Citizens Charter will not hinder a citizen's right to grievance redress. If a citizen has been denied access to the Citizens Charter because it was not created or is inadequate, he or she can approach the SPGRC or the CPGRC directly.

4C.3.2.5 Applicability vis-à-vis other existing laws

Clause 50 of the Bill states that the provisions in this legislation "are in addition to and not in derogation of, any other law for the time being in force". In other words, the grievance redress system proposed under this Bill will not replace existing systems provided for under other laws. However, they represent an alternative system that is available to citizens should they chooseto invoke the mechanisms under this Bill

4C.3.3 IMPLEMENTATION STRUCTURE

4C.3.3.1 Grievance Redress Officer (GRO)

The bill requires all public authorities to appoint a Grievance Redress Officers (GRO) within six months from the date on which the Act comes into force. These officers are to be appointed in every administrative units/ offices at the Central, State, district, and sub-district levels, municipalities and, Panchayats. To ensure fairness, the bill mandates that the GRO be at least one level above and "have administrative control" over the person designated to provide goods or services laid out in the Citizens Charter. Public authorities have the discretion to appoint as many GROs as they consider necessary to make the grievance redress system accessible and available to the public.

The bill also lays out a set of processes related to receiving complaints and responsibilities of the GRO. Accordingly, complaints addressed to the GRO must be acknowledged within two days through a receipt specifying the date, time, place, unique complaint number, details of the person who received the complaint, and the time-frame within which it will be addressed. The complaint must be redressed within 30 days. In the event of a delay, it is incumbent on the GRO to forward the complaint to the

Designated Authority (DA) along with details for the reasons fordelay and failure to resolve the grievance. All such complaints will be treated as appeals to the DA.

The GRO has to give the complainant an Action Taken Report which should include details on the manner in which the complaint was dealt with. The GRO must also identify the reasons that led to the grievance in the first place and the person or office responsible for the default. The GRO must also ensure that departmental action is taken against the office or individual on account of whose deficiency, negligence, or malfeasance the grievance has arisen.

The GRO can recommend the imposition of penalties on defaulting officers. In addition, he/she can also recommend payment of compensation to the complainant. Finally, if there exists prima facie ground for a case under the Prevention of Corruption Act, 1988," the GRO can also recommend relevant action to the DA.

4C.3.3.2. Duties of Grievance Redress Officer

Duties of Grievance Redress Officer
• Provide necessary assistance to citizens in filing complaints.
• Redress grievance within 30 days
• Forward complaints that have not been redressed within 30 days to DA along withdetails and reasons for non-disposal.
• Identify reasons for occurrence of grievance and fix responsibility on person oroffice responsible.
• Ensure action is taken as per conduct rules and departmental procedures against office or individual responsible for deficiency, negligence or malfeasance.

4C.3.3.3. Time frames specified under the bill

Time-frames specified under the Bill	
Acknowledgment of Complaint	Within two days
Redress of complaints by GRO	Within 30 days from the date of receipt of the complaint
Filing of appeal before DesignatedAuthority	Within 30 days from the receipt of thedecision of the GRO or expiry of the period with which ATR was
Disposal of appeals and forwarded complaints by Designated Authority	Within 30 days from its receipt

Urgent Appeals	Within the same day or before the date on which the cause of action may ceaseto exist, not beyond 30 days.
Delivery of copy of DA's decision to parties	Within five working days from the date of the decision.
Filing of appeals before the DA, SGPRC and CGPRC	Within 30 days from the date of the decision.
Delivery of copy of SPGRCs and CPGRCs decision to parties	Within fifteen days from the date of the decision.
Disposal of appeal before SPGRC and CPGRC	Within 60 days from the date on which the appeal was filed.
Disposal of urgent appeals by SPGRC andCPGRC	Within the same day or before the dateon which the cause of action may cease to exist, but not beyond 15 days.

4C.3.3.4 Information and Facilitation Centres

To facilitate complaint registration, the Bill requires every public authority to establish an Information & Facilitation centers. The bill proposes a range of mechanisms that the centers can use to enable complaint registration. These include: establishment of customer care centers, call centers, help desks, and a people's support center.

4C.3.4 Complaints Process and Appeals Mechanism

The first level of redress for a citizen who has not been provided goods or services in accordance with the Citizen's Charter or has a grievance related to the functioning of the authority is before a Grievance Redress Officer (GRO) within the public authority. Thereafter, the citizen may file an appeal against the decision of the GRO before a Designated Authority (DA) outside of the public authority. Appeals related to the decisions of the DA that fall within the jurisdiction of the Central Government or State Government can be made before the CPGRC or the SPGRC, respectively. The Bill provides for a third appeal against the decision of the SPGRC and the CPGRC before the Lokayukta and Lokpal, respectively.

4C.3.4.1. First appeal before Designated Authority (DA)

A "Designated Authority" who is an officer or authority outside the concerned public authority and is above the rank of the GRO has been vested with the authority to hear an appeal filed by any individual aggrieved by the decision of the GRO or for not having received the Action Taken Report in respect of his/her complaint. Each appeal or forwarded complaint should be disposed by the DA within 30 days of its receipt. However, appeals of an urgent or immediate nature must be addressed "within the same day of the receipt of the appeal or before the date on which the cause of action may cease to exist…" but not beyond 30 days. The bill vests the DA with the powers of a civil court under the Code of Civil Procedure. However, the DA is not bound by the procedure under the Code and is expected to abide by the principles of natural justice when hearing appeals.

The DA can impose penalties and award compensation to the complainant while deciding an appeal against an officer "for acting in a mala fide manner or having failed to discharge their duties without any sufficient and reasonable cause" after giving the officer an opportunity to be heard. The DA can also issue directions to officers of the public authority to take steps to secure compliance with the Citizen's Charter. In the event that the DA is of the view that the grievance indicates a corrupt practice under the Prevention of Corruption Act, 1988, he/she must record evidence in support of this conclusion and initiate proceedings against the officer concerned or refer it to appropriate authorities for cognizance.

4C.3.4.2 *Central Public Grievance Redressal Commission and State Public Grievance Redressal Commissions*

4C.3.4.2.1. Composition and Appointment

As has been mentioned, the Bill provides for SPGRCs and CPGRC to be established by State Governments and the Central Government, respectively, in order to hear appeals against decisions of the DA; and to look into complaints and pass binding decisions. The SPGRC and CPGRC will be comprised of a Chief Commissioner and a maximum of ten Commissioners.

Among the Commissioners, at least one each should be from amongst Scheduled Castes, Scheduled Tribes, and Women. The Chief Commissioners and Commissioners of the Central Commission and the State Commissions are to be appointed by the President and the Governor, respectively based on the recommendation of a high powered Selection Committee.

	CPGRC	SPGRC
Selection Committee	Prime Minister, Leader of Opposition in the Lok Sabha,and a sitting judge of the Supreme Court nominated by the Chief Justice of India	Chief Minister, Leader of Opposition in the Legislative Assembly, and a sitting judge of the High Court nominated by the Chief Justice of the High Court
Qualification of Commissioners	Should either be or have been: • A Secretary rank officerof the Central Government, or • Chief Justice of a High Court or Judge of the Supreme Court, or an eminent person with at least 20 years work experience in the social sector and a post graduate degree in a relevant subject.	Should either be or have been: • An officer of the State Government having held the post of Secretary or Principal Secretary to that government, or • A District Judge for at least 10 years, a judge of the High Court of the State, or • an eminent person with 15 years work experience in the social sector with a postgraduate degree in arelevant subject

The Selection Committees at the Centre and State will carry out selections based on a list of eligible candidates - five for each vacancy - recommended by a search committee. The Selection Committee has also been empowered to regulate its own procedure.

The salary and allowances of the Chief Commissioner and Commissioners of the Central Commission shall be the same as that of the Chief Election Commissioner and Election Commissioner, respectively. The salary and allowances of the Chief Commissioner and Commissioners of the State Commission shall be the same as that of the Election Commissionerand Chief Secretary of the State, respectively.

Qualification of Commissioners	Should either be or have been: • A Secretary rank officerof the Central Government, or • Chief Justice of a High Court or Judge of the Supreme Court, or an eminent person with at least 20 years work experience in the social sector and a post graduate degree in a relevant subject.	Should either be or have been: • An officer of the State Government having held the post of Secretary or Principal Secretary to that government, or • A District Judge for at least 10 years, a judge of the High Court of the State, or • an eminent person with 15 years work experience in the social sector with a postgraduate degree in arelevant subject

4C.3.4.2.2.Functions of the Commission

Appeals can be filed on two grounds – against the decision of the DA or if the decision of the GRO has not been received within the stipulated time frame.

Both the Central and State Commissions have been vested with original jurisdiction with respect to complaints filed on the following grounds by a person:

1. Unable to submit an appeal to DA
2. Refused redress of grievance under the Act
3. Whose complaint has not been disposed within specified time limit
4. Denied access to Citizens Charter because it was not created or is inadequate or notwidely disseminated.
5. on any other matter relating to registration and redress of complaint or appeal.

Both commissions can take suo motu notice of failure to deliver goods and services in accordance with the provisions of the Bill and can refer it for

disposal by the HOD. The HOD must then send an Action Taken Report within 30 days to the Commission.

The Commissions can also take suo motu notice and inquire into a matter if there are reasonable grounds to do so. The Commissions can also refer grievances that indicate a corruptact or practice in terms of the Prevention of Corruption Act, 1988 to the appropriate authorities. The burden of proof in appeal proceedings related to non-redressal of grievance is upon the GRO who denied the request.

4C.3.4.2.3.Directions that can be passed by the Commissions

The Commissions have been empowered to direct a "public authority to take such steps as may be necessary to secure compliance with the provisions of the Citizens Charter" and undertake "timely creation, updation and wide dissemination of the Citizens Charter". If they come across any instance involving an officer of the public authority that would constitute a corrupt act or practice as per the Prevention of Corruption Act 1988, they can record evidence and refer the matter to appropriate authorities for action. They can also impose a lump-sum penalty against persons who are responsible for failure in delivery of service or Grievance Redress Officers for their malafide action which may extend to Rs 50,000. The penalty is to be recovered from the salary of the official. The appellate authorities can also order that a portion of the penalty be paid as compensation to the appellant. The orders passed by the Commissions are enforceable

by them just like a decree or order made by a court and in case of their inability to execute it can be sent to a court for the purpose of execution.

The proceedings before the Commissions are deemed to be judicial proceedings within the meaning of Sections 193 (Punishment for false evidence) and 228 (Intentional insult or interruption of public servant sitting in judicial proceeding)

Powers available to functionaries under the Bill				
	GRO	**DA**	**SPGRC**	**CPGRC**
Powers of a civil court to carry out Functions		✓	✓	✓
Power to direct public authority to take necessary stepsto secure compliance with Citizens Charter		✓	✓	✓

Power to direct timely creation, updation, and dissemination of Citizens Charter			✓	✓
Power to impose penalty	**Can only recommend penalty to be imposed tothe DA**	✓	✓	✓
Power to award compensation	**Can only recommend to the DA**	✓	✓	✓
Referral to DA orappropriate authority if grievance indicatescorrupt practice interms of Preventionof Corruption Act, 1988.	✓		✓	✓

4C.3.4.2.3 Third Appeal before the Lokpal and Lokayuktas

According to Clause 47 of the Bill, appeals against the decisions of the SPGRC and the CPGRC will lie before the Lokpal and Lokayukta constituted under the Lokpal and Lokayuktas Act, 2011,respectively. The time frame within which the appeals must be filed will be prescribed by the appropriate government

4C.3.5 Conclusion

The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 holds a lot of promise. It has the potential to revolutionize the public service delivery system in India and empower citizens to demand their right to time-bound delivery of services. Unlike most State laws, where the appellate authorities are also within the government, the fact that the Bill provides for an independent Commission, holds out a hope that those who do not comply with the obligations will be held accountable.

However, issues such as the infrastructure and machinery required for implementation of the Act, jurisdictional clarity of the Commissions, implications on States with their own laws on the subject, and the absence of clear definitions of “service” and “public authority” need to be addressed. The link between public authorities and service needs to be

drawn as at present the Bill will also apply to authorities who may not be providing any direct services to citizens.

Further, while it makes individual officers responsible for failure in service delivery, it fails to acknowledge the role of higher authorities in providing essential infrastructure and resources that are a pre-requisite for ensuring timely delivery of goods and services. It will be a travesty if those responsible for the overall administration are not held accountable.

Another concern is that given the resources constraints, the obligations placed may result in the authorities spending more time attending to grievances than discharging their functions. A balance is possible only if they are adequately staffed.

The success of the grievance redress mechanism will also depend on its physical and geographic

In conclusion, there is a definite need for wider public debate and discussion on the implication of several provisions of this Bill before it is passed in Parliament.

4C.4 RIGHT TO PUBLIC SERVICES

MAHARASHTRA ACT No. XXXI OF 2015.

4C.4.0 Introduction

This is the state act to provide for delivery of transparent, efficient and timely public services to the eligible persons in the State of Maharashtra and for matters connected therewith or incidental thereto.

Whereas both houses of the state legislature were not in session ; and whereas the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a comprehensive law to provide for delivery of transparent, efficient and timely public services to the eligible persons in the State of Maharashtra and to bring transparency and accountability in the Departments and agencies of the Government and other Public Authorities which provide public services to the eligible persons and for matters connected therewith or incidental thereto ; and, therefore, promulgated the Maharashtra Right to Public Services Ordinance, 2015 on the 28th April and whereas it is expedient to replace the said Ordinance by an Act of the State Legislature; it is hereby enacted in the Sixty-sixth Year of the Republic of India as follows :—

4C.4.1. Short title,-

(1) This Act may be called the Maharashtra Right to Public Services extent, Act, 2015. Commencement and

(2) It extends to the whole of the State of Maharashtra application.

(3) It shall be deemed to have come into force on the 28th April 2015.

(4) It shall apply to such Public Authorities which provide public services to the eligible persons as per the provisions of any laws, rules, notifications, orders, Government Resolutions or any other instruments.

4C.4.2. Definitions.

In this Act, unless the context otherwise requires,—

(a) "Chief Commissioner" or "Commissioner" means the State Chief Commissioner for Right to Service or the State Commissioner for Right to Service, as the case may be, appointed under sub-section (2) of section 13;

(b) "Commission" means the Maharashtra State Commission for Right to Service constituted under sub-section (1) of section 13;

(c) "Competent Authority" means the Disciplinary Authority or the Controlling Officer, as the case may be;

(d) "Department" means a Department of the State Government or of a Public Authority, as the case may be;

(e) "Designated Officer" means an officer who is required to provide public services to the eligible person;

(f) "Divisional Commissioner" means the Commissioner appointed by the State Government under section 6 of the Maharashtra.

(g) "Eligible person" means a person who is eligible for obtaining a public service and also includes a legal person;

(h) "First Appellate Authority" means an officer appointed by the concerned Public Authority under sub-section (1) of section 8;

(i) "Government" or "State Government" means the Government of Maharashtra;

(j) "local authority" means any authority, Municipal Corporation, Municipal Council, Nagar Panchayat, Industrial Township, Planning Authority, Zilla Parishad, Panchayat Samiti and Village Panchayat and other local self-Governments constituted by law; and also includes Development Authorities or other statutory or non-statutory bodies;

(k) "Prescribed" means prescribed by the rules made under this Act;

(l) "Public Authority" means,— (a) any Department or authorities of the Government; (b) any organization or authority or body or corporation or institution or a local authority, established or constituted,— (i) by or under the Constitution of India, in the State; (ii) by any other law made by the State Legislature; (iii) by notification issued by the Government; (c) and includes,— (i) an institution, a co-operative society, a Government Company or an

authority owned, controlled or financed by the State Government; (ii) any non-Governmental organization receiving financial assistance from the State Government;

(m) "public services" means such services as may be notified by the Public Authority under section3;

(n) "right to service" means right of an eligible person to obtain the public services within the stipulated time limit as notified by the Public Authority, from time to time;

(o) "Second Appellate Authority" means an officer appointed by the concerned Public Authority under sub-section (2) of section 8;

(p) "Stipulated time limit" means the time limit as notified under section 3 within which the public service is to be provided by the Designated Officer to any eligible person.

4C.4.3. Public services, Designated Officers, Appellate Authorities and stipulated time limit to be notified.

(1) The Public Authority shall, within a period of three months from the date of commencement of this Act, and thereafter from time to time, notify the public services rendered by it along with Designated Officers, First and Second Appellate Authorities and stipulated time limit.

(2) The Public Authority shall display or cause to be displayed on the notice board of the office and also on its website or portal, if any, the list of the public services rendered by it along with the details of the stipulated time limit, form or fee, if any, Designated Officers, First Appellate Authorities and Second Appellate Authorities.

4C.4.4 Right to obtain public services within stipulated time limit.

(1) Subject to the legal, technical and financial feasibility, every eligible person shall have a right to obtain public services in the State in accordance with this Act, within the stipulated time limit. (2) Subject to the legal, technical and financial feasibility, every Designated Officer of the Public Authority shall provide the public services to the eligible person, within the stipulated time limit: Provided that, the stipulated time limit may be extended by the State Government during the period of election as well as in natural calamities to such extent, as may be prescribed.

4C.4. 5. Providing public services within stipulated time limit.

(1) An application for obtaining public services may be made by any eligible person to the Designated Officer. The receipt of an application shall be duly acknowledged and the applicant shall be intimated in writing or through electronic means, specifying date and place of receipt of application, unique application number along with stipulated time limit for the disposal of such application. The stipulated time shall be counted from

the date when the requisite application, complete in all respects, for obtaining the public service is received by the Designated Officer or a person who is duly authorized to receive the application.

(2) The Designated Officer shall, on receipt of an application under sub-section (1), either directly provide or sanction the public service within the stipulated time limit or reject the application after recording the reasons in writing for such rejection. The Designated Officer shall also communicate in writing to the applicant about the period within which an appeal may be made against his order and the name, designation and official address of the First Appellate Authority.

4C.4.6 Monitoring status of application.

(1) Every eligible person having applied for any public services shall be provided with unique application number by the concerned Public Authority so that he can monitor status of his application online, where such system is in operation. Public services, Designated Officers, Appellate Authorities and stipulated time limit to be notified. Right to obtain public services within stipulated time limit. Providing public services within stipulated time limit. Monitoring status of application.

(2) Every Public Authority shall be duty bound to update the status of all applications regarding public services online, where such system is in operation. Use of Information Technology for delivery of public services. Appointment of Appellate Authorities.

4C.4.7 Use of Information Technology for delivery of public services.

The Government shall encourage and aspire all the Public Authorities to utilise Information Technology to deliver their respective public services within the stipulated time limit.

4C.4.8 Appointment of Appellate Authorities.

(1) The Public Authority shall appoint an officer not below the rank of Group "B" or its equivalent rank, who is superior in rank to the Designated Officer, to act as First Appellate Authority to hear and decide the appeal filed by an eligible person against rejection of his application or delay in providing public services, after following due procedure as may be prescribed.

(2) The Public Authority shall appoint an officer who is superior in rank to the First Appellate Authority, to act as Second Appellate Authority to hear and decide the appeal filed by an eligible person as well as by the Designated Officer against the order of the First Appellate Authority.

4C.4.9 Appeal.

(1) Any eligible person, whose application is rejected under subsection (2) of section 5 or who is not provided the public service within the

stipulated time limit, may file an appeal before the First Appellate Authority within the period of thirty days from the date of receipt of, order of rejection of the application or, the expiry of the stipulated time limit: Provided that, the First Appellate Authority may, in exceptional cases, admit the appeal even after the expiry of the period of thirty days, subject to the maximum period of ninety days, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) The First Appellate Authority may direct the Designated Officer to provide the service to the eligible person within such period as he may specify in his order but which shall not ordinarily exceed the stipulated time limit, or he may reject the appeal within the period of thirty days from the date of filing of the appeal, after recording the reasons in writing for such rejection : Provided that, before deciding the appeal, the First Appellate Authority shall give an opportunity of being heard to the Appellant as well as to the Designated Officer or any of his subordinate duly authorized for this purpose.

(3) A second appeal against the order of the First Appellate Authority shall lie to the Second Appellate Authority within the period of thirty days from the date on which the order of the First Appellate Authority is received or after forty-five days from the date of filing of the first appeal in case where the Appellant does not receive any order from the First Appellate Authority: Provided that, the Second Appellate Authority may, in exceptional cases, admit the appeal even after the expiry of the period of thirty days or fortyfive days, as the case may be, subject to the maximum period of ninety days, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(4) The Second Appellate Authority may direct the Designated Officer to provide the service to the Appellant within such period as he may specify in his order or he may reject the appeal within the period of forty-five days from the date of filing of the appeal, after recording reasons in writing for such rejection : Provided that, before issuing any order, the Second Appellate Authority shall give an opportunity of being heard to the Appellant as well as to the Designated Officer or any of his subordinate duly authorized for this purpose.

(5) The First Appellate Authority and Second Appellate Authority while deciding an appeal under this section shall have the same powers as are 5 of vested in civil court while trying a suit under the Code of Civil Procedure, 1908.

1908 in respect of the following matters, namely:—

(a) Requiring the production and inspection of documents or records;

(b) Issuing summons for hearing; and

(c) Any other matter which may be prescribed.

4C.4.10. (1) (a) If the First Appellate Authority is of the opinion that the Designated Officer has failed to provide public service without sufficient and reasonable cause, then he shall impose a penalty which shall not be less than rupees five hundred, but which may extend to rupees five thousand, or of such amount as may be revised by the State Government, from time to time, by notification in the Official Gazette.

(b) If the Second Appellate Authority is also of the opinion that the Designated Officer has made default in providing the public service within the stipulated time limit without sufficient and reasonable cause, he may confirm or vary the penalty imposed by the First Appellate Authority, after recording reasons in writing : Provided that, the Designated Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him by the First Appellate Authority or Second Appellate Authority.

(2) If the Chief Commissioner or the Commissioner is of the opinion that the First Appellate Authority had repeatedly failed to decide the appeal within the specified time without any sufficient and reasonable cause, or unduly tried to protect the erring Designated Officer, then he shall impose a penalty on the First Appellate Authority which shall not be less than rupees five hundred, but which may extend to rupees five thousand, or of such amount as may be revised by the State Government, from time to time, by notification in the Official Gazette : Provided that, the First Appellate Authority shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

4C.4.11. Procedure for recovery of penalty.

The Appellate Authority concerned or the Commission shall communicate to the Designated Officer or the First Appellate Authority, as well as to the Public Authority about the amount of penalty imposed in writing. The Designated Officer or the First Appellate Authority, as the case may be, shall pay the amount of penalty within a period of thirty days from the date of receipt of such communication, failing which the Competent Authority shall recover the amount of penalty from the salary of the concerned Designated Officer or the First Appellate Authority, as the case may be.

4C.4.12. Procedure for fixing responsibility on Designated Officer for repeated failures

(1) The Competent Authority, after receiving an intimation from the Second Appellate Authority about the repeated failures committed by the concerned Designated Officer to provide public services or repeated delays in providing public services as well as repeated failure to comply with the direction of the Appellate Authorities, shall issue a show cause notice to the Designated Officer within a period of fifteen days, why a disciplinary action should not be initiated against him. The Competent Authority shall initiate appropriate disciplinary proceedings against the Designated Officer under the Conduct and Discipline Rules as applicable.

(2) The Designated Officer against whom such notice is issued may represent to the Competent Authority concerned, within a period of fifteen days from the date of receipt of such notice. In case no such representation is received by the Competent Authority within the specified period or explanation received is not found satisfactory, the Competent Authority shall proceed with the departmental inquiry as laid down in the Conduct and Disciplinary Rules of the Public Authority

Procedure for recovery of penalty. Procedure for fixing responsibility on Designated Officer for repeated failures. Constitution of Maharashtra State Right to Service Commission. Provided that, if the Competent Authority finds reasonable and justified grounds in favour of the Designated Officer and comes to the conclusion that the delay in delivery of services to the eligible person was not attributable to him, but was attributable to some other Designated Officer, it shall be lawful for the Competent Authority to withdraw the notice against him.

(3) While fixing the responsibility on such Designated Officer under this Act, the Competent Authority shall follow the principles of natural justice before passing the order in that respect and give reasonable opportunity of being heard to the Designated Officer.

4C.4.13. Constitution of Maharashtra State Right to Service Commission

(1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act, a Commission to be called as "the Maharashtra State Commission for Right to Service" : Provided that, till the time the Commission is constituted by the State Government, the Government may, by notification in the Official Gazette, entrust the powers and functions of the Commission to the Divisional Commissioners in each Revenue Division or any other Government Officer.

(2) The Maharashtra State Right to Service Commission shall consists of,—

(a) The State Chief Commissioner for Right to Service having jurisdiction for Mumbai City District and Mumbai Suburban District; and

(b) One State Commissioner for Right to Service having jurisdiction for each corresponding Revenue Division, excluding the area of Mumbai City District and Mumbai Suburban District.

(3) The Chief Commissioner and the Commissioners shall be appointed by the Governor on the recommendation of a Committee consisting of,—

(i) The Chief Minister, who shall be the Chairman of the Committee;

(ii) The Leader of Opposition in the Legislative Assembly; and

(iii) A Cabinet Minister to be nominated by the Chief Minister.

Explanation.— For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognized as such, the Leader of the single largest group in opposition in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the Commission shall vest in the Chief Commissioner who shall be assisted by the Commissioners and he may exercise all such powers and do all such acts which may be exercised or done by the Commission.

(5) The Chief Commissioner and the Commissioners shall be persons of eminence in public life with wide knowledge and experience in administration in Government or Public Authority.

(6) The Chief Commissioner or a Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or hold any other office of profit or connected with any political party or carrying on any business or profession.

(7) The headquarters of the Commission shall be at Mumbai and the offices of the Commissioners shall be at every Revenue Division.

4C.4.14. (1) The Chief Commissioner and the Commissioners shall hold office for a term of five years from the date on which they enter upon the respective offices, or until they attain the age of sixty-five years, whichever is earlier, and shall not be entitled for re-appointment.

(2) The Chief Commissioner or a Commissioner shall, before he enters upon his office, make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the prescribed Form.

(3) The Chief Commissioner or a Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office.

(4) The salaries and allowances payable to and other terms and conditions of service of the Chief Commissioner and the Commissioners shall be the same as those of State Chief Information Commissioner and the Chief Secretary to the State Government, respectively. No pensionary benefits or other postretirement benefits shall accrue from the posts of Chief Commissioner or Commissioner, as the case may be:

Provided that, if the Chief Commissioner or a Commissioner, at the time of his appointment is in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the State Government, his salary in respect of the service as the Chief Commissioner or a Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity :

Provided further that, where the Chief Commissioner or a Commissioner if, at the time of his appointment, is in receipt of retirement benefits in respect of any previous service rendered in Government or Corporation established by or under any Central Act or State Act or a Government Company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Commissioner or the Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that, the salaries, allowances and other conditions of service of the Chief Commissioner and the Commissioners shall not be varied to their disadvantage after their appointments.

(5) The Government shall provide the Chief Commissioner and the Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purposes of this Act shall be such as may be prescribed.

4C.4.15. Removal of Chief Commissioner or Commissioners.

(1) Notwithstanding anything contained in this Act, the Governor may, by order remove from office of the Chief Commissioner or any Commissioner, if the Chief Commissioner or a Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) Has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or

(c) Engages during his term of office in any paid employment outside the duties of his office; or

(d) Is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; Commissioners Powers and functions of Commission. Action by Government on recommendations of Commission. Or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Commissioner or a Commissioner.

(2) Notwithstanding anything contained in sub-section (1), the Chief Commissioner or any Commissioner, shall not be removed from his office, unless a reference is made by the State Government to the Chief Justice of High Court of Judicature at Bombay seeking an enquiry and recommendation on the proposed removal of the Chief Commissioner or the Commissioner along with the grounds for the removal and material supporting such proposal.

4C.4. 16. Powers and functions of Commission.

(1) It shall be the duty of the Commission to ensure proper implementation of this Act and to make suggestions to the State Government for ensuring better delivery of public services. For this purpose, the Commission may,—

(a) Take suo motu notice of failure to deliver public services in accordance with this Act and refer such cases for disposal as it may deem appropriate;

(b) carry out inspections of offices entrusted with the delivery of public services and the offices of the First Appellate Authority and the Second Appellate Authority;

(c) Recommend Departmental inquiry against any Designated Officer or Appellate Authorities who have failed in due discharge of functions cast on them under this Act ;

(d) Recommend changes in procedures for delivery of public services which will make the delivery more transparent and easier: Provided that, before making such a recommendation, the Commission shall consult the Administrative Secretary in-charge of the Department which is to deliver the public service;

(e) Recommend steps to be taken by the Public Authorities for efficient delivery of public services; (f) monitor delivery of the public services by Public Authorities;

(g) Hear and decide the appeal filed before it as per section

(2) The Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following 5 of matters, namely :— 1908.

(a) Summoning and enforcing the attendance of persons, compelling them to give oral or written evidence on oath and producing documents or things;

(b) Requiring the discovery and inspection of documents;

(c) Receiving evidence on affidavits;

(d) Requisitioning any public records or copies thereof from any court or office;

(e) Issuing summons for examination of witnesses or documents; and

(f) Any other matter which may be prescribed.

4C.4.17. Action by Government on recommendations of Commission.

The State Government shall consider the recommendations made by the Commission under clauses (c), (d) and (e) of sub-section (1) of section 16 and sent information to the Commission of action taken within a period of thirty days or such time thereafter as may be decided in consultation with the Commission

4C.4.18. Appeal to Commission

(1) The eligible person or the Designated Officer being aggrieved by an order of Second Appellate Authority may file an appeal before the Commission within the period of sixty days from the date of receipt of such order.

(2) The Chief Commissioner or the Commissioner, as the case may be, shall dispose of such appeal within a period of ninety days from the date of receipt of the appeal, after giving all the parties an opportunity of being heard. The Commission may impose the penalty on the Designated Officer or First Appellate Authority or vary or cancel the penalty imposed and may order to refund such penalty paid, if any.

4C.4**.19. Annual report.**

(1) The Commission shall, after the end of each financial year, prepare a report on its working during the preceding year as well as on the evaluation of performance of delivery of public services by the Public Authorities and present the same to the State Government.

(2) The State Government shall lay the annual report presented by the Commission before each House of the State Legislature.

4C.4.20. Developing culture to deliver public services within stipulated time limit.

(1) All Public Authorities may take time bound effective steps to reduce the demand from an eligible persons to submit various certificates, documents, affidavits, etc. for obtaining public services. The Public Authority shall make concerted efforts to obtain requisite information directly from other Departments or Public Authorities.

(2) The failure on the part of the Designated Officer to deliver public services within stipulated time limit shall not be counted towards misconduct as the purpose and the aim is to sensitize the Designated Officers towards the aspirations of the eligible persons and to use information technology and adopt e-governance culture to deliver the public services to the eligible persons within stipulated time limit.

(3) On receipt of communication in writing from the Second Appellate Authority or the Chief Commissioner or the Commissioner, as the case may be, regarding repeated defaults on the part of the

Designated Officer, the head of the Public Authority concerned shall be competent to take appropriate administrative action after recording a finding to that effect, but not before giving a show cause notice and an opportunity of being heard to the defaulting officer.

Explanation.—For the purpose of this sub-section, a Designated Officer shall be deemed to be a repeated defaulter, if he commits ten per cent. Defaults in total eligible cases he has received in a year.

(4) All the Designated Officers and Appellate Authorities shall undergo a periodic training to enhance and ensure time bound delivery of the public services. The State Government shall facilitate the training process for all concerned officers and it may be part of syllabus in foundation course of the officers or employees.

(5) (a) To encourage and enhance the efficiency of the Designated Officer, the head of the Public Authority may grant cash incentive of such amount as may be notified by the Government to a Designated Officer against whom no default is reported in a year and who is delivering public services within the stipulated time limit along with a Certificate of Appreciation and also take a corresponding entry in the service record of the concerned officer.

(b) The State Government may give appropriate awards to felicitate the Public Authorities which perform best in achieving the purposes of this Act.

4C.4.21. Allocation of funds.

The Government shall allocate adequate funds for implementation of the provisions of this Act and for training of the Designated Officers, Appellate Authorities and their staff. Appeal to Commission. Annual report. Developing culture to deliver public services within stipulated time limit. Allocation of funds. 10 Provisions to be supplemental to disciplinary rules. Action against eligible person for giving false or frivolous information, etc. Power of Government to issue directions. Protection of action taken in good faith. Bar of jurisdiction. Act to override other laws. Power to make rules. Power to remove difficulties.

4C.4. 22. Provisions to be supplemental to disciplinary rules.

The provisions of sections 9, 12 and sub-section (3) of section 20 of this Act shall be supplemental to the disciplinary and financial rules and such other service rules and regulations as applicable to the employees of the Government or Public Authority concerned, as the case may be.

4C.4.23. Action against eligible person for giving false or frivolous information, etc.

If an eligible person deliberately gives false or frivolous information in the application or submits false documents along with the application and obtain the public services under this Act on the basis of such information or documents, in that case an action shall be taken against him under the relevant provisions of the penal law in force.

4C.4. 24. Power of Government to issue directions.

The State Government may issue to the Public Authority such general or special directions in writing for the purpose of effective implementation of this Act and the Public Authority shall be bound to follow and act upon such directions.

4C.4. 25. Protection of action taken in good faith.

No suit, prosecution or other legal proceedings shall lie against any person for anything which is done or purported to have been done in good faith in pursuance of the provisions of this Act or the rules made thereunder.

4C.4. 26. Bar of jurisdiction.

No civil court, tribunal or other authorities shall have jurisdiction in respect of any matter which the Commission and the Appellate Authorities are empowered by or under this Act to determine.

4C.4. 27. Act to override other laws

In relation to the services notified under this Act and its implementation, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any rules having effect by virtue of any law other than this Act.

4C.4.28. Power to make rules.

(1) The Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act, shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in any rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall, from the date of publication of a notification in the Official Gazette, of such decision have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

4C.4.29. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or

expedient for the purpose of removing the difficulty: Provided that, no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

4C.4.30. (1) The Maharashtra Right to Public Services Ordinance 2015 is Repeal of Ord. Repealed. and

(2) Notwithstanding such repeal, anything done or any action taken saving. (including any notification or order issued) under the said Ordinance shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of this Act

Check your progress exercise 1:

1) Explain **Whistleblower Act**?
2) Give explanation about **Right to Hearing?**
3) Explain **Grievance Redressal Bill**?
4) Explain **Right to Public Service**?

❄❄❄❄❄❄❄