RIGHT TO INFORMATION: THE IMPACT OF CENTRAL INFORMATION COMMISSION ON JUDICIARY AND POLICE IN DELHI

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By

ABDUL HAFIZ

CENTRE FOR THE STUDY OF LAW AND GOVERNANCE

JAWAHARLAL NEHRU UNIVERSITY

NEW DELHI-110067

INDIA

2009

CENTRE FOR THE STUDY OF
LAW AND GOVERNANCE
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067 INDIA

Date: 21.07.2009

DECLARATION

This is to certify that the dissertation entitled **"RIGHT TO INFORMATION: THE IMPACT OF CENTRAL INFORMATION COMMISSION ON JUDICIARY AND POLICE IN DELHI"** submitted by me in the partial fulfilment of the requirements for the award of the degree of Master of Philosophy is my own work and has not been previously submitted for the award of any other degree of this or any other university.

Abdul Hafiz

Abdul Hafiz

CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

Niraja G. Jayal

Prof. Niraja Gopal Jayal

Chairperson
(Chairperson)
Centre for the Study of
Law and governance
Jawaharlal Nehru University
New Delhi 110067

Pratiksha Baxi

Dr. Pratiksha Baxi

(Supervisor)

Office Tel.: +91-11-26704021, 26704761 • Telefax: +91-11-26742506, 26186876, 26704761
E-mail: dir_cslg@jnu.ac.in

DEDICATED TO

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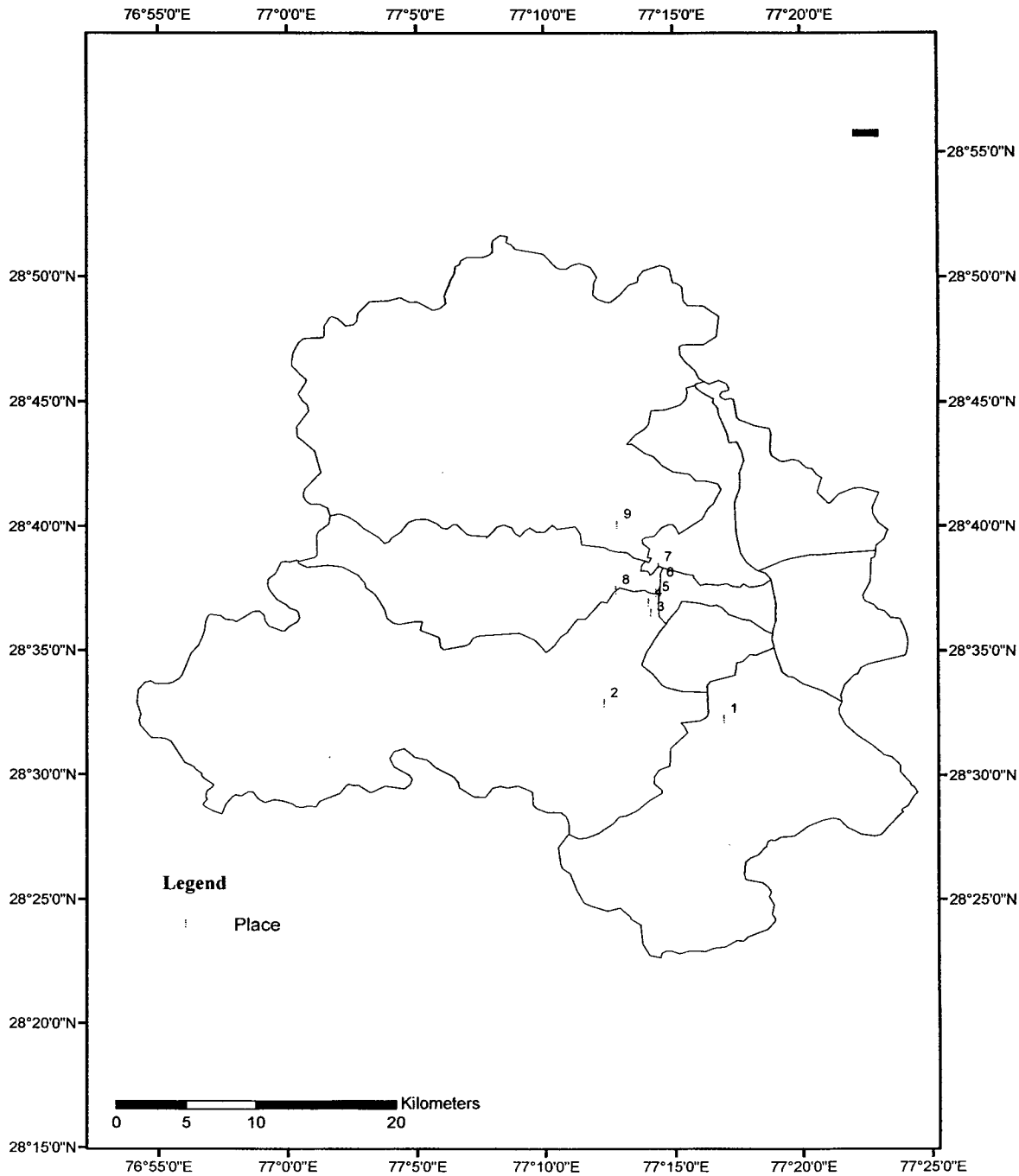
LIST OF ABBREVIATIONS

AA	Appellate Authority
ACP	Additional Commissioner of Police
APIO	Assistant Public Information Officer
ARC	Administrative Reforms Commission
ATR	Action Taken Report
BDO	Block Development Officer
BPL	Below Poverty Line
CAW	Crime Against Women Cell
CHRI	Common Wealth Human Rights Initiative
CIC	Central Information Commission
CJI	Chief Justice of India
CMP	Common Minimum Programme
CPIO	Central Information Public Officer
Cr. P.C.	Criminal Procedure Code
CSO	Civil Society Organisation
DD	Daily Dairy
DDA	Delhi Development Authority
DIC	District Information Cell
DJB	Delhi Jal Board
DoPT	Department of Personnel and Training
DRTI	Delhi Right to Information Act
DSIIDS	Delhi State Industrial & Infrastructure Development Corporation
ECHR	European Convention on Human Rights

EOW	Economic Offences Wing
FOI	Freedom of Information
FSL	Forensic Science Laboratory
GEAC	Genetic Engineering Approval Committee
GNA	Ghana News Agency
GOI	Government of India
HC	High Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IO	Investigating Officer
MHA	Ministry of Home Affairs
MKSS	Mazdoor Kisan Shakthi Sanghatan
MNC	Multi National Corporation
NAC	National Advisory Council
NCPRI	National Campaign for Peoples Right to Information
NDA	National Democratic Alliance
NHRC	National Human Rights Commission
NREGA	National Rural Employment Guarantee Act
PA	Public Authority
PAC	Provincial Armed Constabulary
PCI	Press Council of India
PCR	Police Control Room
PIL	Public Interest Litigation
PIO	Public Information Officer
PRI	Society for Participatory Research in Asia

PRIs	Panchayati Raj Institutions
PS	Police Station
PUDR	People's Union for Democratic Rights
RCS	Registrar Cooperative Societies
RTI	Right to Information
SC	Supreme Court
SEZ	Special Economic Zone
SHO	Station House Officer
SI	Sub-Inspector
SIC	State Information Commission
SIS	State Information Commission
SPIO	State Public Information Officer
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UOI	Union of India
UPA	United Progressive Alliance
UPSC	Union Public Service Commission
USA	United States of America
WB	World Bank

Delhi Map Showing PIO Offices of Judiciary and Police[1]



1..... South-East Distt. Police PIO office 2..... South Distt. Police PIO office

3..... Delhi High Court 4..... Patiala House Court 5..... Supreme Court

6..... Delhi Police Head Quarter 7..... Central Distt. Police PIO office

8..... New Delhi Distt. Police PIO office 9..... Tis Hazari Court

[1] Only those places are shown of which the co-ordinates were taken by the researcher with the help of Global Positioning System.

CHAPTER I

CHAPTER I

INTRODUCTION

> If liberty and equality, as is thought by some are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost.[1]
>
> -Aristotle

SECTION 1: OVERVIEW

The urge to undertake research on right to information emerged from the small encounter which I had in the office of the Block Development Officer (BDO) of *Patiali* block, district *Kanshiram Nagar,* Uttar Pradesh, where an old lady was denied any information regarding her old age pension status. The concerned officer refused bluntly to divulge any information. This small incident somehow provided a spur to me to carry out research in the field of information dissemination structures and legal provisions governing them.

The urge to explore the world of information regime zeroed in onto conducting research on the impact of right to information and Central Information Commission on judiciary and police in Delhi. All these three institutions are intrinsically connected to the day to day functioning of the people and the governance of the country. The response of these institutions to the right to information to a larger extent would decide the fate of right to information law as these institutions are involved in public dealings for a major portion of their institutional functioning. The working of all the three institutions will be the determinant factor in making democratic structures more participatory and accountable for their actions.

Democratic governance gives certain rights to the citizens. All democratic countries incorporated these rights in the scheme of their constitutions. One such right is to elect the representatives and participate in the governance of the country. This is how citizens influence the policies and programmes of the government they elect. People have a democratic right to give or withhold consent to any policy or initiative of the government. It may be useful to invoke Habibullah, who stressed the need of participation of the people in the governance of a country, when he says, "...that

[1] Quoted in the First Report, 'Right to Information: Master Key to Good Governance', Second ARC, June 2006, p.1.

democracy does not mean simply holding of elections. For a democracy to be real, it is necessary that citizens become participants in that democracy; the citizens can believe that governance is theirs because in a democracy governance is theirs."[2]Indeed, delving into recent political history of nations, one would find that people feel alienated from the structures and processes of formal democracy. This alienation can be seen from the declining voting percentages in elections. People felt cheated by the elected representatives and hence their faith and confidence in democracy is being eroded day by day.

Though constitutions of countries incorporate rights and duties such as freedom of speech and expression, right to life and personal liberty but many democracies also have in their constitutions the principle of *'eminent domain'*, which means government can restrict the scope of constitutional rights, if it thinks 'sovereign public interest' so demands. This is cited as the rationale of state sovereignty in contrast to citizen sovereignty, to enact laws for land acquisition, taxation and access to official decision-making.

The colonial legacy of protecting 'official secrecy' through legislation still lingers on in form of *Official Secrecy Act, 1923*. This not only legalised secrecy in the functioning of the government but sharing of 'official information' was made a crime. This protective shield was used by public representatives and government officials to evade public scrutiny of their functions and policies. Through this, citizens were deprived of information, which further negated their participation in the democratic governance. Therefore, right to know is the underlying right, whose absence will automatically deprives citizens of their other rights and without which discharging citizenship responsibilities become impossible.

Peeping into the literature on the subject, one would find that scholars have called the information as global natural resource and therefore it is incumbent on any government to allow access to information. There is a prevalent view among scholars that information is the currency needed as a pre-requisite by the citizens to be the part of the governance of the country (Sharma and Gopal 2006). The information is indispensible natural resource. Rights and duties can only be given fillip in the

[2] Habibullah, Wajahat (2008) made this point during the 3rd Annual Convention on 'RTI and its Ramifications for Good Governance', 3rd-4th November, 2008, p 5.

presence of information. Without the availability of information, rights and duties are useless entities. It is appropriate to quote Colin Gonsalves in this regard, who observes that:

> For years, citizens have been kept totally in the dark and the right to information, though an integral part of Article 19(1) (a) - freedom of Speech and Expression- has remained very often a formal right. What makes the RTI so special then is that it has the backing of the public who are now trying to enforce the statute in a thousand different ways.[3]

The basic objective of the right to information regime is to ensure transparency in the functioning of government and making it accountable to the people.

With the emergence of knowledge society, information has become power. Public and private institutions hold with them a vast reserve of information. However, citizens have little reach to the information available with the government, which it utilizes for decision-making. People are not privy to most of these decisions, as they are taken secretly within the confines of the government offices. Most often, the government classifies much information as secret and hence makes it difficult for the people to access. This situation of non-disclosure of information by government is further complicated by the presence of *Official Secrets Act, 1923* on the statute books, which allows the government machinery to declare almost all information as secret. Secrecy as a component of executive privilege and transparency through right to information are two competing interests. The democratic system of governance needs to harmonise and balance both of them as both seek public interest as a premise for their rationality.

It is self evident that transparency in the functioning of the government is antithetical to secrecy in public administration. Here the question arises as how to settle this irony and develop a way out to harmonise both of these competing interests. Woodrow Wilson shows the way as to how harmonise the competing public interests, when he said:

> I for one have the conviction that government ought to be all outside and not inside. I, for my part, believe that there ought to be no place where everything can be done that

[3] Gonsalves, Colin (2007), 'To Know is to be', Combat law, Vol. 6, Issue 2 March- April, 2007, p 1.

everyone does not know about. Everyone knows corruption thrives in secret places and avoid public places.[4]

In the light of the observations made by Woodrow Wilson, it becomes necessary that in democracies maximum disclosure and minimum secrecy must be the guiding principle. All the organs of the democratic set-up are required to be made equally open, transparent, answerable and accountable. Access to information legislations should not only bring into its domain the executive but also legislature and judiciary. Legislature is accountable to the extent that every five years, it has to go the people to seek their fresh mandate and also all those elected to the legislature declare their assets before the public in the form of an affidavit before the returning officer of the Election Commission of India and these affidavits are made available to the public through internet or on request by the people. Of all the three organs, it is a common perception that judiciary is least accountable to the people. This is because judges in the higher judiciary are selected by the collegium of judges headed by Chief Justice of India (CJI). Their selection is not democratic in the true sense of the term and hence they feel less obligated to the concept of people's scrutiny and accountability. Judiciary has always been reluctant to open up to the public scrutiny. In not too distant past, it has resisted every move by CIC and other public spirited organisations to disclose the assets of their judges under the *Right to Information Act, 2005.* The CJI termed it as interference in the independence of judiciary, when United Progressive Alliance (UPA) government announced the enactment of a legislation to make mandatory for the judges to declare their assets on regular intervals. Of late, voices for greater transparency and openness have started surfacing from the legal fraternity. Former CJI Justice J.S. Verma is the front runner in this initiative. He strongly advocates transparency and accountability for good governance. He is of the view that 'in the absence of transparency, accountability cannot be fixed.'[5] Justice Verma supported judicial transparency and called for judges' declaration of their personal assets. His observations in the CIC Convention, 2008 are worth quoting, where he said, "If the candidates contesting elections are required to furnish the statement of

[4] Quoted by Das, Kamaljit (2006), 'Right to Information Act'. *Orissa Review*, Feb-March, 2006, p 42.
[5] Observations in 3rd Annual Convention on 'RTI and its Ramifications for Good Governance', held during 3rd -4th November, 2008.

their assets and even of criminal cases pending against them, there are no reasons as to why judges should not file their property returns and be in the public domain."[6]

The efforts for making judiciary to come fully under the net of RTI received setback when the Union cabinet gave approval to a bill for judges to declare their assets before CJI and CJs. The judiciary has its say prevailed over the saner voices for transparency by compelling the Government of India to dilute the provisions in the proposed bill for judges to declare their assets. The proposed bill approved by the Union cabinet makes it mandatory for judges of higher judiciary to disclose their assets to Chief Justice of India in case of Supreme Court and to the Chief Justice of the High Court in case of judges of High Court[7]. The public will never know the status of the judges' assets as they would be declared before the CJs and hence out of the public sight. There is no use of making such a law, which restricts people from knowing, what actually should have been brought to the public domain. This is quite unfortunate. The judiciary claiming immunity from scrutiny by people weakens the concept of transparent governance, which it fathered in various landmark cases from *State of U.P. v. Raj Narain*[8] to *Peoples' Union for Civil Liberties v. Union of India.*[9]

The case with police in Delhi was no different. Over the years, it has developed around it a shield of secrecy, where all information was considered by the police as confidential and hence denied to the public. Before the advent of the right to information the police, it seems, was not answerable to the people in a way it has become now with the right to information being used as a tool in the hands of the people to force the police to mould and adapt itself to the environment of transparency and accountability. The present study is undertaken to see the impact of CIC on the functioning of the police in Delhi also. The need was felt to see whether the apex body under the Act has had any impact on the police. The need becomes more compelling, when Delhi police wanted it to be excluded from the purview of the Act by placing it under second schedule to the Act. There are already 18 organisations exempted from the application of the Act[10]. However, Delhi Police is not in any way similar to the organizations mentioned in second schedule to the Act. Therefore the request of Delhi

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[6] Ibid. 5
[7] The Hindustan Times, 'Cabinet okays bill to keep judges assets confidential', dated July 25, 2009, New Delhi.
[8] (1974) 4 SCC 428.
[9] AIR SC 2004 1442.
[10] Section 24 of the Act exempts 18 intelligence and security organizations from the application of this Act.

Police, to exempt it does not hold water as there are no substantial arguments in support for doing this. It should continue to be answerable to the people as peoples' faith will be strengthened in this institution, which has seen the erosion of faith and confidence of the people in its functioning over the years. It owes to the public to be open and transparent.

Both judiciary and police cannot afford secrecy as over the period of time there has been constant erosion of faith and trust of the people in them. The further attempts by them to remain away from the public gaze would be damaging to them and the nation as a whole. So, in order to prevent these institutions from going into oblivion and isolation, they must open them up to the public scrutiny.

All institutions of governance must follow the principle of participatory democracy. To ensure that decisions are made in the public interest, access to information laws must open up all facets of governance. This is the only way to make citizens know on what basis and on what rationale the decisions of the government are taken. In fact, decision making processes should be in the public domain. Daruwala goes a step further to bring "bodies supported by taxpayers, financed by public money and mandated to perform actions for the people, within the precincts of access laws."[11]

A detailed examination of Right to Information Act and the impact of Central Information Commission on judiciary and police in Delhi is the prime focus of the present study. For the purpose of convenience, the Right to Information Act, 2005 will be referred as 'Act' and the Central Information Commission as the 'CIC' and sometimes as 'Commission', whenever these expressions will appear in the body of the dissertation.

SECTION 2: BACKGROUND AND SCOPE OF THE STUDY

In democracy people are the masters and those exercising public power and authority are merely the agents of the people. The Constitution of India subscribes to this principle and affirms it by saying that "*We the People of India*, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular Democratic Republic...[I]n our Constituent Assembly this twenty-six day of November, 1949, *do*

[11] Daruwala, Maja et al (2008), 'Freedom of Information Bill: A Great Step Forward', http://www.ipsnews.net/news.asp

hereby adopt, enact and give to ourselves this Constitution."[12] The Constitution says that sovereign power flows from the people and hence all the public officials working in government department enjoy power and authority on behalf of the people. It is because of this logic, the people are entitled to access any government records, documents or information. In order to realise this concept and to strengthen the constitutional belief of empowering people of India, the Press Council of India under the chairmanship of Justice P.B. Sawant drafted a Bill on the right to information. After long deliberations and struggles, the *Right to Information Act, 2005* was enacted, which came into force on October 12, 2005. The importance of right to information was underlined by the Second Administrative Reforms Commission (ARC) in its first report on the Right to Information by stating that:

> Public functioning has traditionally been shrouded in secrecy. In the maturing of our democracy, right to information is a major step forward; it enables citizens to participate fully in the decision-making process that affects their life so profoundly...[T]he transformation to transparency and public accountability is the responsibility of all three organs of the state.[13]

Before the enactment of the *Right to Information Act 2005*, there were no grounds for exemptions from disclosure of information in the *Official Secrets Act, 1923*. Therefore, in the absence of legally prescribed exemptions, it was very difficult for the government officials to deny information but now since certain exemption clauses have been incorporated in the RTI Act in Sections 8, 9 and 11, a common perception is developing in the thinking and behaviour of the institutions and instrumentalities of the State to frequently take recourse to these exemptions to deny information to the public at large. The Supreme Court of India tried to save itself from the scope of the RTI Act by claiming exceptions which were not even given in the Act.[14] Similarly, police deny information under various clauses of section 8 of the Act.[15] Therefore, under these contestations, the present study was undertaken to bring out the reality. The study in this regard was necessary as judiciary and police remain in touch with the public and they are involved in maximum public dealings. Their

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[12] Preamble to the Constitution of India, 1950 (emphasis added).

[13] Observations of Veerapa Moily, the Chairman, Second ARC, in the preface to the First Report titled 'Right to Information: Master Key to Good Governance', of the Second Administrative Reforms Commission, June, 2006.

[14] The Chief Justice of India, Justice K.G. Balakrishnan said that the office of CJI is not covered by the RTI Act. He observed that since his office is a constitutional one, *RTI Act, 2005* does not apply on offices created by the Constitution. But later he retracted back his statement saying RTI applies to bodies created by the Constitution. Section 2(h) specifically mentions that bodies created by the Constitution are public authorities. RTI Act applies to all public authorities defined under section 2(h) of the Act.

[15] See section 8 in the Annexure I.

response to the information regime matters much. The present study was the endeavour, which brought out some facts hitherto hidden from public gaze.

The purpose of the present study was to gauge the impact of the Central Information Commission in bringing changes in judiciary and police. In not too distant past, there have been many contestations from both the institutions to insulate them from the purview of the RTI Act. In these circumstances, the study to gauge the impact of RTI on these institutions assumes significance as it will point out the success or failure of the Central Information Commission in bringing about structural and attitudinal changes *vis-à-vis* right to information.

The scope of study is limited to the Right to Information and the functioning of the Central Information Commission *vis-a-vis* judiciary and police in Delhi. It also analyzed the role of the Central Information Commission in bringing about structural and attitudinal changes towards peoples' right to know. The objective of the study stated briefly is as follows:

- To study the role of the Central Information Commission in discharging its statutory obligation of bringing information regime in the case of the judiciary and the police in Delhi.

- To study the implementation of the Right to Information in judiciary and the police in Delhi.

I have argued that the Right to Information has brought added responsibility related to information dissemination as well as adjudication. The Central Information Commission is dealing with three new challenges namely: i) information dissemination and clarification of issues related to that, ii) regulating and seeking compliance from institutions of State like judiciary and police, which do not change iii) and provide for judicial support in adjudicating citizens' rights against institutions of State.

I have argued in this thesis that the success of the right to information largely depends upon the way the above three issues are handled by Central Information Commission and the judiciary, otherwise the *Right to Information Act, 2005* may serve as a ritual of administrative reforms. Central Information Commission's and

judiciary's responses may activate responsiveness of the institutions of State or even lead to an increased complacency.

This argument is based on the explorations whether Central Information Commission is able to discharge its statutory obligations cast on it by RTI Act. The question that how successful the Central Information Commission has been in implementing right to information in judiciary and the police in Delhi is also looked into the study. An attempt is also made to see whether there is a need to amend certain provisions of the Act to make it more effective. The higher judiciary's treatment to the right to information is also one of the components of the research. What has been the treatment of the sub-ordinate judiciary and Delhi police to the right to information regime is also analyzed in the present thesis.

SECTION 3: LITERATURE REVIEW

The quote from Aristotle cited at the beginning of the chapter implies that government should be participatory in nature. The peoples' participation in the governance of a country can only be ensured through sharing of information regarding decision-making, formulation and implementation of programmes. This further fructifies in making governance transparent and accountable. A democracy is meaningless without the transparent and accountable working of the institutions of the State. Both transparency and accountability derive their strength from the information available to the citizens. James Madison has rightly observed that, "A popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both and a people, who mean to be their own governors, must arm themselves with the power which knowledge gives."[16] The same sentiments are echoed in the observations of Jaiswal when she says "ignorance is not bliss but bondage, and knowledge is not folly but duty, if government by the people is to possess a semblance of reality."[17] Informed citizenry is the basic ingredient for any democratic foundation. According to Madison, people are the ultimate source through which power flows and hence information within the confines of the government must be shared by it with the people. The government owes a duty

[16] Strickland, Lee S.(2005),'The Information Gulag: Rethinking Openness in times of National Danger', Government Information Quarterly 22 (2005),p. 549, quoted from Fendall, P. R. (Ed.). (1865) 'Letters and other writings of James Madison', Philadelphia: Lippincott. Published by Order of Congress, III. p 276.
[17] Jaiswal, Kamini (2002), 'Right to Know', Journal of NHRC, Vol. I, 2002, p 248.

towards its people to come out clean by providing everything it has for the public scrutiny.

A very pertinent issue to settle first is the definition of the right to information. It needs to be answered what right and information imply. Salmond defines legal right as "an interest recognized and protected by a rule of law - an interest the violation of which would be a legal wrong done to him, whose interest it is, and respect for which is a legal duty."[18] The term information has been derived from the Latin words *'Formation'* and *'Forma'* which mean giving shape to something and forming a pattern. Nimmer is of the view that "the law defines as a positive social goal the promotion of a public domain of free, generally available factual information. As a result, it seeks to encourage the disclosure of information to the public and the creation of an environment conducive to the free use of the information thus disclosed. The countervailing principles, however, support a policy protecting confidential and secret information."[19] So, there has always been a contestation between dissemination and secrecy of information. In participatory form of democracy this conflict should be minimised to the extent possible. As disclosure of information and its secrecy both seek their legitimacy from the public interest argument, it is necessary to weigh, which side of the balance, the public interest lies. In other words, there are conflicting interests of political participation on one hand and the administrative autonomy on the other. The question is how to reconcile them. It will be appropriate to invoke O' Donnell and Schmitter, who argue that "more democracy is the only solution for the contradiction between the demand for political participation and the need for administrative autonomy."[20] In a democracy accountability holds a position of prime importance and it cannot be fixed without knowledge about the functioning of the government and citizens' right to information is a *sine quo non* in this process of acquiring knowledge and strengthening democracy. In short, it is information which empowers citizens. Saha aptly remarks in this regard when he says, "both disclosure and non-disclosure of official information serve public interest in a particular context. The Court is guided by the maxim *'salus popules cast suprema lex'*, which means that

[18] Salmond, 'Jurisprudence', Universal Law Publishing Co., 12th ed. 2004, p 218.
[19] Nimmer, Raymond T. et al (1992), 'Information as a Commodity: New Imperatives of Commercial Law, Law and Contemporary Problems', Vol. 55, No. 3, Technology and Commercial Law, (Summer, 1992), p 104.
[20] Quoted by Fischer, Julie (2003), 'Non-Governments; NGOs and the Political Development of the Third World', 2003, p. 28.

regard for public welfare is the highest law."[21] When the conflicting interests of disclosure of information and secrecy come before the court, it is always guided by the principle of public welfare. The same philosophy of public welfare or public interest is incorporated in the provisions of the RTI Act. The exemptions are provided in the law, where public authorities are not bound to disclose the information but provisos to these exemptions say that if the public interest so demands, the public authority may disclose the information, which is exempted under sections 8, 9 and 11 of the Act.

Information or knowledge is an important resource. An equitable access to this resource must be guaranteed. Justice V.R. Krishna Iyer has very lucidly explained the domain of this right in his article on 'Freedom of Information', where he remarks that:

> Speaking in the spirit of a democratic world order, it is basic that each one of us everywhere on the globe has a right to know and a duty to shape the course of things, on a national and even planetary scale. For, there are no passengers on Spaceship Earth. Everybody is crew. Indeed, the philosophy of information freedom and open government is best spelt out in the premise of the U.S. House Committee on Government Operations, which approved the Freedom of the Information Act, in 1966.[22]

The right to information is recognised globally. In today's world, where we are heading towards world government, the right to know assumes significance. Global citizens must be equipped with a tool of right to information to bring governments to come out clean and accountable for every action of theirs. For the nations to grow, information dissemination to its people is the pre-condition. The countries, which share information, grow but those which favour secrecy weaken themselves. Jaiswal while emphasizing the imperative of the right to know quotes Lord Acton where he observes that: "everything secret degenerates, even the administration of justice; nothing is safe that does not show it can bear discussion and publicity."[23] Hence, from the above discussion, it is crystal clear that right to information has to be ensured irrespective of the costs involved in providing information to the people. Though, there are contestations between disclosure and non-disclosure, but harmoniously the differences and contentions must be resolved to make information regime robust and healthy. The present study attempts to harmonise conflicting interests. The public interest is the best criterion to harmonise the conflict

[21] Saha, Tushar Kanti, 'Administrative Law', 2001, Kanishka publ. Ist ed. p. 157 (emphasis added).
[22] Quoted by Jaiswal, Kamini (2002), 'Right to Know', Journal of NHRC, Vol. I, 2002, p. 250
[23] ibid 22, p 250.

interests. Indeed, the above mentioned literature on the subject would provide a good understanding of the issues at hand and would help in making us to establish connection required for the next chapters.

The main purpose of this study is to evaluate the functioning of the Central Information Commission to gauge the impact of Right to Information on judiciary and police in Delhi. There is felt an urgent need to effectively implement the right to information in judiciary because it sets the tone and tenor of any law by providing interpretations to various provisions of it. If the attitude of the judiciary itself is found wanting on the access to information then the negative repercussions are inevitable and the whole future of ushering India into the regime of transparency and accountability would be in peril. The Information Commission is bound by the judgments of the Supreme Court and High Courts. Hence, the treatment to the right to information by judiciary becomes important for the proper and effective functioning of the Central Information Commission.

Since the enactment of *Right to Information Act, 2005*, people have filed RTIs in different spheres of governance. RTI applications as tool are being used frequently for seeking information about ration cards, pensions, passports, promotions in various government departments and municipalities but the judiciary and the police are selected for the purpose of this study.

The applications under RTI mark a contestation between right to information and the exceptions for non-disclosure of information contained in section 8 of the Act. Government on one or the other pretext of the exemption clauses always tries to deny information. Can the exemptions in RTI Act imply that the denial of information or secrecy has been legalized? For instance, if one wants to know about why a particular MNC was allotted a space at so cheap prices in SEZ, the government will try to deny this information under economic interest of the state under exemption clause (1)(a) of section 8 of the Act. Similarly any information about the communal riots and progress of the criminal cases being tried can be denied by quoting exemptions that this information would impede the process of investigation or apprehension or prosecution of the offenders.[24] Hence, looking into how State institutions take recourse to these

[24] See section 8(1)(h) of the RTI Act in Annexure I.

exemptions or exceptions to deny information would show us whether right to information has deepened the democracy as claimed by the government discourse or it has legitimized State power? This question allowed to examine the nature of information regime by questioning the use of the slogan 'information is power'. Who uses the RTI? What is the response of the State institutions to such an exercise of rights? And how do exceptions allow us to understand the extent to which Right to Information assures substantive equality? The concept of substantive equality has been applied to provide affirmative action through reservation to weaker section of the society in employment and education but a question arises, would the same philosophy of substantive equality be applied to the provisions of RTI Act? With the enactment of the law on right to information formal equality is given by making the law applicable to all institutions of State, but the question remains, will the law be given substantive equality so that every citizen irrespective of social or economic status in the society uses the provisions of the Act to redress his grievances? Would the common people be able to use the provisions of RTI Act like the rich people to get information from the institutions of the State? Will the provisions of the Act be interpreted to exclude minimum information from the scope of RTI Act? And whether the provisions of the Act would be equally applicable to all the three organs of the State? Or will the judiciary be exempted from the applicability of the provisions of the Act? These questions allow to gauge the extent of how much formal equality has been translated into substantive equality?

Therefore, this study analyses the response of the judiciary and police in relation to right to information in order to evaluate the working of the Central Information Commission because these institutions symbolize State power, a specific form of power which is marked by secrecy. It is believed that the present study will make the policy makers aware about the problems faced by the citizens in accessing information and they would take corrective measures for removing the constraints in implementing RTI Act. The study also highlights the institutional bottlenecks faced by the Central Information Commission. If these constraints are removed, the CIC as an institution would be able to effectively perform its role to usher in transparent and accountable governance.

SECTION 4: RESEARCH METHODOLOGY

The study included both primary and secondary sources. With regard to primary data collection, qualitative survey was carried out in the form of the unstructured interviews of concerned officials of the Central Information Commission, Court staff, police officials and human rights activists. The data in the form of figures was collected from CIC, Supreme Court, Delhi High Court, Tis Hazari District and Sessions Judge Court, Delhi Police Headquarters, Central District, New Delhi District, South Delhi District and South-east District of Delhi Police for the quantitative information. The decisions of Central Information Commission delivered with regard to judiciary and police were collected from the Commission's central office. The secondary data included analysis of government reports, Central Information Commission Annual Reports, parliamentary debates, media reports and reports prepared by civil society organisations and activists. The relevant laws and appellate decisions of Central Information Commission since January 2006 till mid-July, 2009 were looked at and analysed.

The decisions delivered in various appeals and complaints filed before the CIC by the appellants or complainants since the Commission started adjudicating, i.e., from January 2006 till June, 2009 were studied and then the most outstanding of these decisions or landmark orders, which have settled the law on the provisions of the RTI Act, 2005 were analysed to bring about their summary and substance of the decision.

The landmark cases were analysed and the challenge was to present them without the use of legal jargon and technical interpretation. The presentation of the analysis has to be in a simple language easily comprehensible by the common people.

As both qualitative and quantitative techniques have been employed to collect data, simple statistical tools and analysis methods using statistical software packages have been used to derive conclusion using graphs and tables. The data collected through primary and secondary sources were considered and interpreted during the analysis to derive the conclusion.

CONCLUSION

As we know the *Right to Information Act, 2005* came into effect on October 12, 2005. In India, the implementation of the RTI Act has been quite uneven across the states. In some states, information is being provided to citizens on time; while in several other states, the information is denied or delayed in a large number of cases. Hence, the need was felt to assess the progress of RTI and CIC. The purpose of the present study was to gauge the functioning of CIC with regard to judiciary and police in Delhi. These institutions were chosen as they prefer isolation than sharing information with the people. In this study, an assessment was made regarding the working and the performance of CIC *vis-a-vis* judiciary and police.

There is no denying the fact that regular projections of good practices and bad experiences in relation to right to information can make RTI a potent weapon of accountability and transparency thus leading to good governance. The jurisprudential analysis of decisions of the CIC on the *Right to Information Act, 2005*, is a step in the direction of providing the interpretation and meaning to the different provisions of the Act. The landmark orders and decisions of CIC will help in giving life and shape to the provisions, which in the long run will settle the law on different aspects.

It is hoped that the analysis of the decisions of the CIC will be beneficial for public authorities, public information officers and citizens at large.

Time and resource constraints restricted the study to a small time period. Since much time has not elapsed when the Central Information Commission was constituted and RTI Act passed, there is at every step the scarcity of the material. The lack of cooperation by the PIOs of Courts and District Information Cells of Delhi Police proved to be hindrance in the collection of data. Even the PIO of Supreme Court refused to share any information and asked the researcher to file an RTI application to get the required information. I got similar responses from most of the PIOs of Delhi Police, whom I visited during the course of field work. All PIOs were found to be afraid of the authorities under whom they are working and asked the researcher to get the requisite permission from those authorities. Some PIOs shared the records on the condition of anonymity. The attitude of secrecy learnt over the years by these PIOs indicated the way in which secrecy is produced.

Following this introductory chapter, the dissertation is divided into five chapters. The second chapter deals with the theoretical and evolutionary aspect of the right to information. The third chapter deals with the right to information, the Central Information Commission, its constitution, powers and functions. In this chapter an attempt has also been made to explain basic issues, which an ordinary citizen must know to appreciate the working and impact of the Central Information Commission on judiciary and police. The fourth chapter analyses the role the Central Information Commission in implementing right to information in judiciary in Delhi. In this chapter first of all, the decisions of the Commission have been analyzed, which had impacted the judiciary. The chapter separately looks at decisions impacting the Supreme Court, Delhi High Court and finally the Sub-ordinate judiciary. The subsequent portions of chapter four analyzed the implementation of the right to information by the judiciary. Again, this implementation of RTI was divided into three parts comprising of the Supreme Court, Delhi High Court and the Sub-ordinate judiciary in Delhi. The fifth chapter studies the impact of the Central Information Commission on police in Delhi. Again, the decisions of the Commission were analyzed, which were landmark and which compelled the police to bring certain changes in their attitude and practices. The other portion of this chapter deals with the implementation of RTI by police itself. The sixth chapter concludes the study after analyzing all the primary and secondary sources.

CHAPTER II

CHAPTER II

RIGHT TO INFORMATION: A CONCEPTUAL ANALYSIS

INTRODUCTION

In this chapter, an attempt is made to throw some light on the concept, theory and evolution of right to information. Available literature has been analysed on this subject to theorise the information regime.

The world after the Second World War witnessed many nations getting their Independence from the colonial powers. Democracy became the buzzword and most of these newly independent countries adopted democratisation of political and social spaces as the way of nations' life. India being one of them embraced the ideal of democracy. But democracy in India was often confused with merely going for free and fair elections and the other key constituents of democratic regime such as transparency and accountability became the victim of neglect. The need of the hour was to address this democratic deficit. Attempts were made to plug in democratic deficit by constituting vigilance commission and bringing legislation like 'Prevention of Corruption Act' but all these proved to be a non-starter. The result was for everybody to see. The initiatives to bring in internal accountability failed to deliver.

Global community is witness to the initiatives worldwide in recent times towards strengthening the protection of freedom of information rights and empowering individuals to access government held information. About 68 countries have approved access legislation and many are in the offing to enact such laws. According to David Banisar's (2004) 'Global Survey of access legislation', 57 governments enacted right to information laws but Roger Vleugels' (2006) 'Overview of Access Legislation' finds 11 more nations, which has passed access legislations and hence taking the tally to 68. Internal and external pressures from civil society, regional and international organizations and local and international press associations resulted in the enactment of these legislations.

In India, academia and social activists came forward to rescue the fledgling democracy and to strengthen the internal and external mechanisms of accountability

and transparency. Social pressure and movement started to gain momentum with the constant demands for openness in the governance. Organisations like *Mazdoor Kisan Shakti Sangathan* (MKKS) launched agitations for sharing vital information with regard to governance held by the government. These movements yielded results and the later part of 90s saw a sustained series of *Jan Sunwais* (public hearings), where government officials were to answer the queries of the common people. The initiatives bore fruits and finally National Democratic Alliance (NDA) government came up with '*Freedom to Information Act, 2002*'. There were certain shortcomings in the Act, which were pointed out by National Advisory Council (NAC). In 2005, United Progressive Alliance (UPA) rectified these shortcomings suggested by NAC and the Right to Information Act, 2005 saw the light of the day on June 21, 2005. *Right to Information Act, 2005* empowers citizens to ensure accountability from the public institutions. The paradigm shift has taken place from maximum secrecy and confidentiality to maximum disclosure with the advent of RTI regime. The provisions of *Official Secrets Act, 1923* has been watered down by section 23 of the Act, which says, 'The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the *Official Secrets Act, 1923*, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act'.

The legal recognition to right to know would bring a marked shift in citizen-government relationship. The law requires a change in behaviour of both. Citizens need to ask clear and precise questions while government officials have to inculcate the habit of providing information willingly.

SECTION 1: RIGHT TO INFORMATION: THEORETICAL MOORINGS

The twentieth century is the golden period of human liberty and dignity, when human rights movement gained momentum as never before. Though, the human rights find its presence in '*Magna Carta*' in England in the thirteenth century, the United States Declaration of Independence eighteenth century and the French Declaration of the Rights of Man in the nineteenth century, yet the major impetus was given to human rights culture at the international level with the adoption of Universal Declaration of Human Rights in 1948.

In a welfare state, it is the duty of the government to protect and enhance the welfare of the people. If a society or nation has chosen democracy as an article of faith, it is incumbent upon the government to keep its citizens informed of what it is doing. Citizens have a right to decide by whom and by what rules they shall be governed. It is only if people know about the functioning of the government that they can discharge their role, which democracy assigns to them. This concept of right to know is well emphasised by Indian Supreme Court, when it says, 'The citizens right to know the facts, the true facts, about 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.'[1] In a democratic polity, dissemination of information is the foundation of the system. Constitutionally speaking keeping citizens informed is an obligation of the government. Democracy faces three powerful challenges. These are, 'How do we learn to speak truth to power; make truth powerful and make the powerful truthful'(Jeremy Cronin cited by Mohapatra 2006:47).

There are divergent views on the meaning, content and object of information. Some theorists consider information as an asset while others have thought it to be an instrument to exercise freedom of choice. Sharma & Gopal consider information as currency and hence an asset in the hands of people (2006:1). While Tripathi views information as an instrument, which provides opportunity for exercising the freedom of choice (2006:27). Denying the public the opportunity to have access to information weakens the position of public, whereas its disclosure empowers them to a greater level (Baisakh 2006:1). Nigam thinks that transparency and openness in the governance results in the consolidation of stability and integrity of nation as they give rise to a forum for communication between citizens and the state (2006:29).

Government is the repository of information on behalf of the people as in democracy power flows from '*We the people*' as proclaimed by various constitutions of the world including the Indian constitution. Information is collected by the public officials for public benefit using the money out of public funds (CHRI 2003). Therefore, there is a widespread view that access to information is a basic right of the populace.

[1] See *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

There are theorists like Nimmer, who equates information with power. Nimmer says that, 'information, unlike goods, can be used without being used up and can be sold without being given up. One can sell and deliver information to another but still retains the information in his possession and for his own personal use' (1992: 105).[2] It is the common man, who is the fulcrum of our democratic system, as an observer, as the seeker of information, as the one who asks relevant questions, as the analyst and as the final judge of our performance. Therefore, if government shares information with its citizens, it is not that, it is no more having the possession of the information. As Nimmer said information is something which still remains in the possession of the entity who shares it with others.

The ideal of democracy entails free exchange of ideas and debate. Success of democratic set up depends upon the freedom it provides to the citizens to participate in the functioning of the governance of the country. This was made amply clear by Justice Jeevan Reddy, who observed that:

> The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an aware citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them [(1995) 2 SCC *at* page 161].[3]

The right to know further gets its strength from the observations of then Chief Justice of India, Justice A.M. Ahmadi when he says:

> In modern 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 [(1997) 4 SCC *at* page 306].[4]

In 1994, Supreme Court of India elevated right to know and said that it is necessary for making governance transparent and accountable[5]. In another case court stated;

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[2] Raymond T. Nimmer; Patricia Ann Krauthaus, Information as a Commodity: New Imperatives of Commercial Law, *Law and Contemporary Problems*, Vol. 55, No. 3, Technology and Commercial Law, (Summer, 1992), p 105.

[3] *Secretary, Ministry of I & B vs. Cricket Association of Bengal,* (1995) 2 SCC 161.

[4] *Dinesh Trivedi vs. Union of India,* (1997) 4 SCC 306.

[5] *People's Union for Civil Liberties v. Union of India (*2004) 2 SCC *at* p. 476.

> It is not in the interest of the public to cover with a veil of secrecy the common routine business ... [T]he responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption [(1975) 4 SCC *at* pg. 428].[6]

Information as a power and entitlement was also recognised at global level and therefore United Nations General Assembly, in its first session in 1946, adopted Resolution 59 (I), which states: 'Freedom of information is a fundamental human right and...the touchstone of all the freedoms to which the UN is consecrated'. The principle of 'maximum disclosure', which establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances, has gained momentum throughout the globe. United Nations General Assembly Resolution 217(III) A of 1948 recognizes 'Freedom of expression including freedom of information and free press as a fundamental human right'. The UDHR also recognises freedom of expression. Under this declaration, freedom of expression includes the right to seek, receive and impart information and right to access information held by public authorities".[7] Similarly under Article 19 (2) of the 'International Covenant on Civil and Political Rights' (ICCPR), 1966, United Nations General Assembly states:

> Everyone 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, in writing or in print, in the form of art, or through any other media of his choice.[8]

Hence, internationally and nationally information is being accepted as something, which belongs to the citizen and government is the repository of it. The governments cannot refuse to share information except in few cases, which are exempted in the interest of security and sovereignty of a nation. As this is gaining ground, access of information legislation has become necessity in the scheme of governance. All international institutions, through their policy-making, compel the governments to bring in the information regime to make people participate in the decision making and governance of the country.

[6] *State of UP v. Raj Narain*, (1975) 4 SCC at pg. 428.
[7] Article 19, Universal Declaration of Human Rights.
[8] Resolution 2200A (XXI) of 1966.

SECTION 2: RIGHT TO TRANSPARENT GOVERNANCE AND RIGHT TO KNOW

International institutions like UN, World Bank, Asian Development Bank International Monetary Fund and other donors are pressing countries to adopt access to information laws as part of an effort to increase government transparency and reduce corruption. The transparency in governance is composed of two basic ingredients. First ingredient is the state's obligation to disclose and second is the people's right to make informed choices. This right to transparent governance goes far beyond the limits of right to information. This right is partly a matter of legal instruments, such as the Right to Information. But, it is a right, which creates favourable and conducive conditions, where people can use legal entitlements like RTI and NREGA etc. It empowers people to make effective use of these laws to make democratic institutions more participatory. The right to transparent governance is a broader concept, which includes the right to know within its boundaries. In other words, right to know is a sub-set of right to transparent governance. According to Aruna Roy and Jean Dreze, this places the discourse in the context of the rights of citizens and the obligation of the government. Transparent governance 'ultimately requires building a culture of transparency in public life, where the obligation is generic (2007:27)'. Transparency and people's right to information can be used as means to make informed choices. Hence, here we can find a relationship between transparency and the right to information with democratic participatory governance. The right to transparent governance through right to information assumes significance as firstly it eradicates corruption as secrecy and confidentiality are its staple diet. Secondly, transparency is essential for accountability in the public sector. Thirdly, transparent governance results in the participatory democracy and fourthly, it is required for ongoing struggles for economic and social rights such as the right to education, the right to food and the right to work. The right to transparent governance is incomplete without the right to education since 'informed choices' require not only information but also critical understanding. With the passage of Right to Information Act, 2005, the right to transparent governance has got required impetus. Effective use of right to information is one of the important components of transparent governance.

SECTION 3: RIGHT TO INFORMATION AND CONSTITUTION

The survival of a democratic society depends on its acceptance of new ideas, trying them and rejecting them if found worthless. Hence, ideas and information held by the government must be put in the public domain. The healthy growth of the society can be ensured by the free flow of information. It is now increasingly felt that the right to information ensures transparency and accountability in governance. This makes the governance participatory.

A short glance at the constitutions of major countries would reveal that they do not contain specific provisions with regard to the right to information. However, Sweden, South Africa and Nepal have specific provisions giving its citizens the right to information. USA gave the right to information to its citizens by the *Freedom of Information Act, 1966.* When found that too much secrecy was there in public administration, 'the Fulton Committee (1966-68) in Britain recommended for an inquiry into the *Official Secrets Act, 1911*(Das 2006: 43)'. The institution of inquiry, to analyse the impact of Act of 1911, points to the increasing need to have transparency in the governance in Great Britain during 1960s. Internationally, a wave in favour of transparency and accountability of governments swept the globe with the United Nations coming out with declarations asking countries to come up with legal regimes providing right to information.

The right to information started assuming momentum when UDHR was adopted in 1948 by United Nations providing everyone the right to seek, receive information and ideas through any media and regardless of frontiers (Article 19, UDHR, 1948). Similar provisions were also enshrined in the *International Covenant on Civil and Political Rights, 1966.* It stipulates that, "Everyone shall have the right to freedom of expression, the freedom to seek and impart information and ideas of all kind, regardless of frontiers" (Article 19, ICCPR, 1966). These provisions helped in creating an amicable environment for the acceptance of right to information regime in different countries.

The Indian Constitution has no expressed provision granting the right to information. But the objectives of Indian Constitution in the preamble describe liberty of thought and expressions as one of the essential components of the constitution.

However, Supreme Court since 1975 has expressed its opinion time and again that the right to information is an intrinsic part of the right to freedom of speech and expression given under Article 19(1)(a) of the Constitution. The right to information derives its existence from three articles in the Indian Constitution. They are Article 14 (right to equality), Article 19(1) (a) - freedom of speech and expression and Article 21 (right to life and personal liberty). Article 14 says, 'The state shall not deny to any person equality before law or the equal protection of laws within the territory of India'. As interpreted broadly by Supreme Court Article 14 is anti-thesis to arbitrariness. The right to information also attacks arbitrariness by ensuring transparency in governance. Therefore, if the government denies information without any reasonable justification, it violates the very spirit of Article 14.

Similarly, Article 19 does not expressly provide the right to information, but the SC has observed on several occasions that the right to know is a part of the right to freedom of speech and expression (Article 19) because information is must for expressing the opinion. The right of information is an inalienable component of freedom of speech and expression guaranteed by Article 19(1) (a) of Indian constitution. This legal position was upheld by the Supreme Court in the cases of *Secretary, Ministry of information and broadcasting v Cricket assn. of Bengal*[9] and *Bennet Coleman v Union of India.*[10]

In *Bennet Coleman* case Newsprint Control Order restricted the allotment of newsprint to newspapers. SC held in this case that restriction on allotment of newsprint not only infringed newspapers' right to freedom of speech and expression granted in Article 19(1) (a) of the Constitution but also the readers' right to read. It further held that readers' right to access the newspaper was his right to information which was implicit in the right to right of freedom of speech. Continuing the same argument, SC observed in *S P Gupta* case[11] that 'the people of this country have a right to know every public act, everything that is done in a public way, by those functionaries. They are entitled to know the very particulars of every public transaction (AIR 1982 SC *at* page 149)'.

[9] (1995) 2 SCC 161.
[10] AIR 1973 SC 106.
[11] *S.P Gupta v. Union of India*, AIR 1982 SC 149.

The right to life and personal liberty enshrined in Article 21 is broadly interpreted by Supreme Court. It covers the right to food, education, health and personal liberty is interpreted as freedom from illegal and unnecessary restraint. Non-disclosure of information related to these aspects is often a denial of the right to life. In *State of U.P. v. Raj Narain*, the SC opined that:

> In a government of responsibility like ours where 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 bearings. 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 at any rate have no repercussion on public security.[12]

Similarly, in *Essar Oil Ltd v. Halar Utkarsha Samiti*[13], the SC held that right to information emerges from right to personal liberty guaranteed by article 21 of constitution. Article 21 is the one among other fundamental rights, which has been interpreted broadly by SC guaranteeing many judicially created fundamental rights. The wider interpretation given to Article 14, 19 (1) (a) and 21 by SC gives constitutional validity to right to information. Indian judiciary is hailed world-wide for upholding peoples' liberty on many occasions, when democracy was the victim of personal whims and caprices of politicians and administrators.

Indian Constitution implicitly guarantees the right to know in various other provisions. Besides Articles 14, 19(1) (a) and 21, the other provisions which give right to information under Indian Constitution are contained in Articles 311(2) and 22(1). Article 311(2) provides for a government servant to know why he is being dismissed or removed or being demoted. The constitution provides for making representation against the order of dismissal, removal or demotion. Though this provision is restricted to civil servants, but it gives them the basic facility to ask the government the reasons dismissal. The other provision, which provides for asking the reasons from the government, is Article 22(1). The article says, 'no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal

[12] AIR 1975 SC 865.
[13] AIR 2004 SC 1834.

practitioner of his choice.' Through Article 22(1) a person can know the grounds for his detention.

The provisions for access to information were read into in many articles of the Indian Constitution by the judiciary to usher in the transparent and accountable democratic regime. Higher judiciary especially Supreme Court created many fundamental rights within the already enshrined rights in part III of the Constitution. Higher judiciary through the interpretation of various provisions, especially part III of the constitution always stood for openness and accountability of the government. Justice Krishna Iyer, the torch-bearer of the legacy of personal liberty, freedom of speech and one of the architects of PIL jurisprudence in India, has rightly observed in the *Maneka Gandhi*[14] that 'a government which functions in secrecy not only acts against democratic decency, but also buries itself with its own burial.'

Through the interpretation of the constitution judiciary give rise to acceptability of the freedom of information. This was done to usher in the era of transparency and accountability. Supreme Court was aware that there is a lackadaisical attitude in the functioning of the executive wing of the government. And hence, it developed whole lot of public interest litigation jurisprudence and through the judicial activism came to the rescue of citizens, who were denied participation in the functioning of government. Judiciary while doing this was conscious to the fact that in a democratic set-up one must have the information held by the government to express its informed opinion on any issue and hold the government accountable.

SECTION 4: RIGHT TO INFORMATION: SOME IMPORTANT DEVELOPMENTS

As a result of the pressure exerted by public spirited citizens, media, national and international organisations and the atmosphere created by judiciary in favour of right to know, government of India enacted '*Freedom of Information Act, 2002*'[15]. As this law into came into force, its shortcoming became visible. It was felt that to ensure greater and more effective access to information, the *Freedom of Information Act, 2002* must be made more progressive, participatory and meaningful. The National Advisory Council (NAC) came out with certain suggestions to be incorporated in the

[14] A.I.R. 1978 SC 597.
[15] This Act was passed by Parliament in December, 2002.

said Act to ensure smoother and greater access to information. The important changes proposed *inter alia*, include establishment of appellate machinery with investigating powers to review decisions of the Public Information Officers (PIOs), penal provisions for failure to provide information as per the law, provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions and effective mechanism for access to information and disclosure by authorities etc. After careful consideration of the suggestions of the NAC and others the government resolved to bring changes in the law. But the changes were so overarching that the government decided to repeal the Act of 2002 and enact another law for providing an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India by Supreme Court.

The changes proposed and the later repeal of the Act of 2002 could find favour with the UPA government at the centre because in its Common Minimum Programme (CMP) the government had promised to enact a new law on the right to information. It says under the heading of 'Administrative Reforms' that 'The Right to Information Act will be made more progressive, participatory and meaningful (CMP 2004:16)'. The major constituent of the UPA, the Congress also promised the enactment of right to information law in the general elections of 2004 in its Election Manifesto, which reads as under:

> All government agencies but particularly those that deal with citizens on a day-to-day basis must operate in a responsive and accountable manner. The Right to Information Act at the centre will be made more progressive, meaningful and useful to the public. The monitoring and implementation of the Act will be made more participatory and the penalty clauses regarding delays, illegal denials and other inadequacies relating to the supply of information to the public will be operationalized soon (2004: 28).[16]

Keeping all these consideration in mind, government introduced the Right to Information Bill in the Parliament. The proposed legislation was passed in the Parliament and became effective from October 12, 2005 all over the country as '*Right to Information Act, 2005.*'

Under the *Right to Information Act, 2005*, the procedure for asking information is very simple; anybody can make a request on a plain paper in writing with a nominal fee. Section 7(1) of RTI Act mandates that information requested should be provided

[16] Congress Lok Sabha Election Manifesto, 2004.

within 30 days of such request. The Section 12 provides for the constitution of a Central Information Commission with a Chief Information Commissioner and up to 10 Central Information Commissioners. A similar set up is envisaged for the State Information Commissions (SICs) under section 15 of the Act.

RTI Act covers Central and State Governments, Panchayati Raj Institutions (PRIs), local bodies and all other bodies including NGOs, which are established, constituted, owned and substantially financed by the Government (Section 2, RTI Act, 2005).

Section 4 casts a duty on all public authorities within the meaning of section 2(h) to provide for what is called 'Pro-active disclosure'. This is also known as providing *sou motu* information. Public authorities must publish a wide variety of information on the particulars of its organizations, functions and duties. For the dissemination of such information, notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority, may be used. All this information must be disseminated in local language of the area concerned. The Act prescribes a reasonable fee for supplying the information but there is no charge for the people living below poverty line.[17]

Section 24 of the Act exempts intelligence and security organisations and it says, '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'. Second Schedule to this Act contains 18 intelligence and security organisations established by the Central government.

With the coming into existence the central legislation on the right to information and about 13 states also having passed the Right to Information laws, there have arisen the questions about the nature of relationship between Central Information Commission and State Information Commissions. There is no mention of the term 'information' in any of the three lists in the VIIth Schedule to the Constitution. Therefore, when the term 'information' is not mentioned in any of the lists, it becomes a residuary subject. On the matters concerning the residuary subjects,

[17] See Proviso to section 7(5) of RTI, Act in Annexure I.

only Union government is entitled to make law and therefore, according to the established constitutional norms, if a conflict arises between central and state laws, the central legislation will prevail.

SECTION 5: RIGHT TO INFORMATION: OTHER INDIAN LAWS

The right to information law is unambiguous on the point of its scope and applicability. Section 22 of RTI Act specifically provides that, 'The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the *Official Secrets Act, 1923*, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.' But even after the passage of right to information legislation in India, there exists laws that are inconsistent with the information regime. Sections 123, 124, and 162 of the *Indian Evidence Act* go against the spirit of RTI Act, 2005 as they provide for non-disclosure of documents. Section 123 says that any head of department may refuse to provide information on the plea that it concerns the affairs of state. The only requirement for him is to swear that it is a state secret. This swearing will entitle him not to disclose the information. Similarly, Section 124 states that no public officer shall be compelled to disclose communications made to him in official confidence. Section 162 bars court not to inspect a document relating to matters of state. These archaic laws must be brought in conformity with the provisions of RTI Act.

According to the provisions of the *Atomic Energy Act, 1912,* it shall be an offence to disclose information restricted by the Central Government. Similarly, the law governing central civil services restricts a government servant not to communicate or part with any official documents except in accordance with a general or special order of government.

A document can be declared as confidential to prevent its publication under section 5 of the *Official Secrets Act, 1923*. Although, RTI Act under section 22 categorically declare that, 'the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the *Official Secrets Act, 1923*, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act', but the interpretation of RTI Act by Central Information Commission and higher judiciary would settle this contentious issue of whether RTI

would prevail or other laws blocking the information would have their say. This issue require immediate solution else, it would mar the implementation of spirit and provisions of the RTI Act.

SECTION 6: RIGHT TO INFORMATION: INTERNATIONAL PERSPECTIVE

With the advent of United Nations at global scene, the right to information was recognised in 1946 in the resolution of General Assembly, which says, 'Freedom of Information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated.' In the *Universal Declaration of Human Rights, 1948*, right to information finds its rightful place in the form of Article 19, which says, '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.' These two initiatives of UN provided contours and spur for the international community to come to terms with a new concept, which requires governments to be open and transparent in their functioning.

UN Convention against Corruption[18] adopted by General Assembly in Article 13 asks for:

> (i) effective access to information for public; (ii) undertaking public information activities contributing to non-tolerance of corruption (including 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.

Similarly, the European Convention on Human Rights (ECHR)[19] in article 10 provides:

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impact information and ideas without interference by public authority and regardless of frontiers. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of judiciary.

[18] Adopted by UN General Assembly on 31 October, 2003.
[19] Adopted on 4 November, 1950.

Different international organisations are framing disclosure policies. For example, the United Nations Development Programme (UNDP) has adopted the *'Public Information Disclosure Policy 1997'* as the sine quo-non and one of the important components for Sustainable Development (Sharma and Gopal 2006: 142). 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 in Article II states: 'The exercise of opinions, expressions and information, recognised as an integral part of human rights and fundamental freedoms is a vital factor in the strengthening of peace and international understanding.' The free flow of information in the public domain is now considered as the catalyst for reaching understanding and bringing peace and stability.

Keeping in view the compliance and necessity of implementing these international statutes into domestic laws various countries have taken lead in the enactment of access to information laws. Sweden became the first country to introduce information regime in 1766. Finland followed the suit, when it enacted the law in 1951 giving its citizens the right to know. Later, *Freedom of Information Act, 1966* was enacted by America and in 1974 it was amended to limit the exemptions and making provisions for penalties in case of denial of information. In 2002, Pakistan showed its intent to bring in transparency in the functioning of the government by promulgating '*Freedom of Information Ordinance*'. Though the United Kingdom was late in its response to bring information regime but finally it came out with a statute called *Freedom of Information* in 2005, the same year when India enacted its *Right to Information Act, 2005.*

The recent indication in Ghana to bring in legislation on right to information is a welcome development. The government of Ghana gave an assurance to enact the Right to Information law to deepen accountability and transparency within the governance system in the country. The government assured this at a video conference session by the Commonwealth Human Rights Initiative (CHRI) and the World Bank on the topic: 'Towards implementing freedom of information legislation in Ghana: taking stock of international experience in Africa'. The session was organised by CHRI and WB to encourage efforts towards building an effective RTI regime in

Ghana and to facilitate knowledge sharing on key issues related to implementing the RTI legislation in the country (GNA 2009).

In 2008, the '*Freedom of Information Bill, 2008*' was introduced in Barbados. It aims to bring Barbados in the line of more than 70 countries, which have RTI laws. In the Caribbean region, 'Barbados will be joining other Commonwealth Member States such as Antigua and Barbuda, Belize, Jamaica, Saint Vincent, Trinidad and Tobago to have laws, which allow access to information.

The proposed Bill has many positive provisions, one of which is the acknowledgment of the 'Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information' signed at Atlanta, Georgia in February 2008. The Atlanta Declaration states that "access to information is a fundamental human right; it is essential for human dignity, equity and peace with justice; and a lack of access to information disproportionately affects the poor, women, and other vulnerable and marginalized people' (Daruwala et al 2008).

Bangladesh has also introduced Right to Information Ordinance, which came into effect with the government publishing a gazette notification on 20 October, 2008. Since it will require some time to establish an information commission, Ordinance mandates people to wait for 90 days to get information. It was declared in the Ordinance that all preparation for giving information under the law would be made within 90 days. The ordinance has 27 articles dealing with objectives of the ordinance, methods of information dissemination, how to seek or disclose information, exemptions from disclosure, formation of the information commission and punishment for not disclosing information.

The ordinance says that within 60 days of its promulgation all public, autonomous and statutory organizations and other private institutions run on government or foreign funding will nominate an officer-in-charge for each of the unit to provide information.[20]

The ordinance provides that information commission will consist of a chief information commissioner and two commissioners, at least one of them will be a

[20] Information gathered from www.bnnrc.net

woman. Every authority shall prepare and publicize a list of information which will be supplied free of cost. Other information will be made available with the payment of prescribed fee.

The trend toward greater information access is bound to continue as there is favourable world opinion in favour of access to information. Many countries in Eastern and Central Europe and Africa are planning to adopt comprehensive legislations on access to information. In addition to these there are many countries access to specific types of information. For example, in some countries, new 'data protection' laws now enable individuals to obtain their own records held by government agencies and private organisations. In other countries, specific statutes give rights of access to information in areas such as health and the environment.

The enactment of statutes regarding right to know shows a gradual process of providing citizens with a tool to fight corruption and make democracy more participatory and accountable. International voices for transparency found their echo in the national laws. Indeed, time is ripe for the remaining countries, which have not legislated on access to information to usher in the information regime. This will certainly earn more respect and acceptability to nations in the global community.

SECTION 7: RIGHT TO INFORMATION: INDIAN EXPERIENCE

If we analyse the working of democracy in India, there is great deal of disillusionment and disappointed in the populace of this country. At the grassroots, people feel that government is something over which they exercise no control. This feeling was also gaining grounds in Rajasthan, when in the late 1980s *Mazdoor Kisan Shakti Sangathan* (MKSS) started its campaign called '*Hamara paisa, hamara hisaab*'- our money, our accounts. People were fed up with years of mal-administration and the callousness of government functionaries and they felt a sense of helplessness.

Local people were of the view that nothing concrete could be done unless records see the light of the day. The poor were willing to fight for their rights but in the process they realised that records are to be accessed and then put into the public domain for scrutiny. In this way, the struggle for information became the means of establishing the right to earn a daily wage and to live with dignity. When records were

placed for public scrutiny, the individual struggle turned into a collective one. All this made clear that there was exploitation not just of the people who were denied wages, but of the whole village. There was a deep rooted corruption in all the village developmental works.

The shift in perception from 'my money to our money was quick and dramatic, and an important alliance was formed for the first time between the poor in the village fighting exploitation and the middle class fighting corruption' (Roy et al 2007: 31). Livelihood issues gave rise to right to access records of local expenditure. Through this whole process another slogan was born, '*Hum janenge- Hum jiyenge-* the right to know- right to live'. This campaign helped to change the discourse on the right to information across the world. There is an amalgamation of two discourses. The discourse on the right to know was linked and intertwined with the discourse on right to life.

The struggle for accessing the records led to increased accountability. In December, 1994 these records were placed before the people in public hearings. The response of the people was quite good. The individual grievances got converted into a larger issue of gross mismanagement of public money. The shift in perception from 'my money' to 'our development' carried the struggle forward into a much larger paradigm of political participation, demanding accountability and genuine self-governance. Right to know was interlinked with the right to accountability of all political promises.

By 1997, it was clear that a new discourse on the right to information was emerging, linking information with the right to life. The slogan '*Hum janenge, hum jiyenge*' not only involved the poor with this issue but also activated a large constituency that was willing to campaign for the right to information through struggles and political mobilisation (see Roy 2007). Roy is of the view that the intellectual understanding of it being a freedom of expression issue was strengthened by this new alliance of marginalised and the activists. The great power of this issue and its strong theoretical foundations as articulated by ordinary people created the potential for a people's campaign to energise the process of legislation on the right to information.

Indeed, this struggle in Rajasthan taking the marginalised into its fold and campaigning for transparency resulted in the enactment of access to legislation in different states. Tamil Nadu was the first state to come up with the right to information in 1996. Though this law suffers from many pitfalls, but Tamil Nadu deserves the credit of bringing in first access to information legislation in the history of India. Goa also passed the RTI Act in 1997 with Rajasthan, Maharashtra and Karnataka passing Right to Information Acts in 2000. Delhi legislated on the access to information law in 2001.

Prior to the passing of the *Right to Information Act, 2005*, most of the information was denied to the public under the garb of the *Official Secrets Act, 1923*. Therefore, there was felt a need to enact a law to override the provisions of this Act and to bring in a system where sharing of information becomes the general rule. This necessity found its base in the demand for Right to Information in Rajasthan, which provided a platform to make this issue national.

After MKSS *dharna* at *Beawar* in 1996 a large cross section of people began to participate in this. The birth of National Campaign for People's Right to Information (NCPRI) was the result of this struggle. Later on senior members of the press got interested. Justice P.B. Sawant, the then chairman of the Press Council of India (PCI) made the first draft with the active consultation of the members of bench, bar, social activists, politicians, civil servants, editors etc.

In 1996, this draft known as the 'Press Council Draft' was circulated to all the members of the parliament and to all states. States started enacting their own right to information legislation. The campaign starting from a non-descript place in Rajasthan culminated in the enactment of the national law, the *Right to Information Act, 2005*. With this information becomes legal entitlement of citizens. Except the exemptions enumerated in section 8 of the Act, nothing can be denied by the state. Indeed, information is now a currency, a tool and a legal entitlement.

SECTION 8: RIGHT TO INFORMATION AND FILE NOTINGS CONTROVERSY

Those among people's movement and citizens' group who had planned to work diligently to strengthen the RTI regime got a shock, when they heard that attempts were being made to dilute the provisions of right to information law to

exclude the file notings from the purview of right to information. The other proposed amendments in the act include exempting information from disclosure while a matter was under consideration and withholding of the identities of all officers who made inspection, observations, and recommendations or gave legal advice or opinion. Access to the cabinet note following cabinet decision was sought to be blocked. It is interesting to note that all these amendments were put before the cabinet in gross violation of section 4(1) (c) of the RTI Act. This section mandates that every public authority shall 'publish all relevant facts while formulating important policies or announcing the decisions which affect public.' According to the intent of this section proposal to amend the RTI Act should have been put in the public domain before taking them to the cabinet.

Indeed, more astonishing were the justifications, given by the government for bringing these amendments. The three reasons were given to justify the amendments. First, the *Freedom of Information Act, 2002* (FOI) was cited as evidence. It was argued that FOI Act excludes file notings from the purview of right to information. But the facts show the opposite. The reality is that FOI restricted access to file notings only while a decision was under way. There can be no justification to weaken the RTI Act, when UPA government promised in CMP that, 'the Right to Information Act will be made more progressive, participatory and meaningful' (CMP 2004:16). Second justification was that similar laws exist in other countries also. In fact, 'out of 32 foreign Acts on right to information, 25 provide various levels of access to the deliberative process' (Singh 2007: 37). Though some of the developed countries like Australia, Norway, Japan and New Zealand do not allow access to the deliberative process but they have other established systems for ensuring bureaucratic accountability.

The third rationale for bringing amendment was that individual officers are likely to face threats by media trials and there will be unnecessary litigation against individual officers. As far as these threats are concerned there already exists an exemption under section 8(1) (g) that says that all information whose disclosure would endanger the life or physical safety of any person are exempted.

Disclosure of file notings would help ensure that officers are not pressurised into recording notes that are not in public interest. It would also improve the quality of decision making as it would ensure that decisions are based on reasonable grounds and are not arbitrary or self-serving. Such transparency would also deter unscrupulous administrative and political bosses from overruling their subordinates and taking decisions that have no basis in law or are against public interest.

If we look in constitutional terms 'file notings' are the recording of the views and reasons by various officials for or against any proposed decision. The right to information is a constitutional guarantee under Article 19(1) (a) subject to reasonable restrictions given in Article 19(2), which allows certain reasonable restrictions on this right in the interest of 'the sovereignty and integrity of India, the security of the state, friendly relations with foreign countries, public order, decency or morality, or in relation to contempt of court, defamation and incitement to an offence.' Any restriction on the right to information should fall within the above mentioned categories. Section 8 of the RTI Act allows restrictions on the right to information in the interest of all the factors mentioned in Article 19(2). Article 19(2) does not permit any other restriction. Secondly, all state actions must conform to the rule of non-arbitrariness to satisfy the requirements of Article 14. Arbitrariness is anti-thesis to the concept of rule of law enshrined in Article 14. It means that all decisions must be based on a discernible principle and cogent reasons. A reasoned order or decision is the assurance against nepotism, arbitrariness and corruption. Providing information without disclosing the reasons for such a decision would not pass the test of non-arbitrariness or rule of law. The very purpose of the right to information would be frustrated without the knowledge of the reasons for the decision emerging from the file notings.

CIC has held file notings to be part of information. It has in many cases held that file notings are not exempted from disclosure. In the case of *Satyapal v. CPIO, TCIL*[21], the issue before the commission to decide was whether the file notings are exempted from disclosure under the *Right to Information Act, 2005*. It was held by the CIC that definition under section 2(i)(a) of the RTI Act, 2005, 'records' includes a file and records can be accessed under right to information given in section 2(j)(i). Hence,

[21] Appeal No. ICPB/A-1/CIC/2006, dated 31/1/2006.

it is clear that an applicant has a right to access a file and file notings are an integral part of any file, which cannot be exempted from disclosure.

In another case, *Pyare Lal Verma v. Ministry of Railways*[22], the appellant sought some information, which related to file notings of the department. The information was refused to the appellant. The CPIO observed that the Department of Personnel and Training of the Government of India in its website had declared that file notings are covered under the exemptions. Therefore, he refused to divulge the file notings to the appellant. The appellant's second appeal was also rejected by the Appellate authority, which upheld the decision of the CPIO.

When this matter was taken to CIC under section 19(1) of the RTI Act, it held that file notings were not exempted from disclosure. The CIC cited its earlier decision in the case of *Satyapal v. TCIO*, in which the Commission had expressly ruled that file notings were information in terms of Sections 2(i)(a) and 2(j)(i) of the of the Act and have to be disclosed. The Commission directed the Department of Personnel for removing misleading information from its website.

There is a need on the part of the government to internalise the spirit of RTI. It needs to honestly share with the people the information, which it holds as the custodian of the people. 'The assurance of public scrutiny or transparency in government business will motivate the honest to be frank and candid in the expression of their views in writing' (Verma 2007:41). The present legal status with regard to file notings is that, they are the part of right to information and cannot be denied to the applicant. This is in consonance with the rule of non-arbitrariness contained in Article 14 of the constitution as the reasons of any decision taken by public authorities in the form of file notings cannot be denied to citizens.

CONCLUSION

The idea of knowing the affairs of dispensations turned into legal entity with the international recognition of access to information as the basic human rights. Incorporating the ideals of transparency and accountability by allowing citizens to access information is the realisation of the fact that governments hold the charge of

[22] Appeal No.CIC/OK/A/2006/00154, dated 29/1/2007.

running the affairs of the country on behalf of the people and hence people are the ultimate source of power, who need to be kept informed of each and every activity of the government, which it claims to take on behalf of the people. Therefore, right to information is a sine quo-non of democratic polity. Information always empowers people and ensures transparency in the administration. But it is common experience that people's access to information is very limited because of the fact that structures vested with the responsibility to disseminate information are not adequately equipped to deliver information. The *Right to Information Act 2005* seems to be an effective legislation but questions are raised about its efficacy because of the incapability of the structures entrusted with the work. And it also requires aware and educated people who can use it for their welfare. So, government first needs to ensure that a majority of population becomes educated in order to make this law serve the marginalised, deprived and poor people. The successful implementation of the law would necessarily increase public participation.

With the placing of collective issues more and more in the public domain, people increasingly perceive right to information as a means to build public opinion to influence decision making and thereby making democratic structures more accountable. It is not that access laws are only used to fight corruption but are regularly used to determine the proactive agenda of social change and alternative development as is evident from the number of people using RTI in environmental matters. People in Goa through RTI application forced the government to roll back the policy of forming eight SEZs.[23] This shows that people are setting the agenda for development and regularly challenging the model and paradigm of development pursued by various governments.

Enacting a law, its better implementation and providing required structures for monitoring the progress are three issues, which require serious consideration. There are countries, where access laws are there but instead of disclosing the information they legalised secrecy and confidentiality. For instance, the Zimbabwe's right to information law actually legislated censorship rather than freedom of information. The mere existence of an information law, however, does not always mean that access is voluntarily allowed. The access and enforcement mechanisms are weak and

[23] http://timesofindia.indiatimes.com/rssarticleshow/msid-3121683,prtpage-1.cms accessed on July 19, 2009.

unenforceable in many countries. Governments always resist while disclosing the information. In other countries, better treatment and interpretation are not given to access laws by courts and they sometimes undermine the intent of law. Not only this, the structures created to implement right to information succumb to the political pressures. These structures are also made handicapped by not allocating sufficient funds by the government, so that they remain a toothless tigers in the matter of discharging their responsibilities under the access to information legislation.

Information has lot of potential to bring in revolutionary changes. The success of information regime depends on the willingness of the dispensations to share information with their citizens and the citizens' capability to use this non-violent *soochna satyagraha* for making people empowered and government structures less vulnerable to corruption.

CHAPTER III

CHAPTER III

RIGHT TO INFORMATION ACT: CENTRAL INFORMATION COMMISSION AND ITS CONSTITUTION, POWERS AND FUNCTIONS

INTRODUCTION

In a democracy, we begin with the premise that people are supreme and governments work on behalf of the people. Constitution of India also proclaims this when it says in its preamble that, 'we the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens: Justice, social, economic and political.'[1] Constitutionally, government gets the mandate and power to administer the affairs of a country from the people, who are the sovereign and source of power. Under situation like this, people have every right to know what the dispensation is doing in their name so as to adjudge the performance of the government by getting information on each and every decision being taken by the government. This right to know is, however, subject to certain restrictions, which the government can impose in the interest of the security and integrity of the nation. But these exemptions from disclosure of information should not go beyond the restrictions provided under Article 19(2) of the Constitution. The Constitution is the highest law of the country and therefore every law must conform to the spirit and letter of it. If exemptions made are incongruous to Article 19(2), it will be declared *ultra vires* to the Constitution.

Until the 1990s governments were very reluctant to share information. They used to shield themselves in the garb of secrecy and confidentiality under various provisions of '*Official Secrets Act, 1923*' a colonial legislation, enacted by British government to hide maximum information from sharing with the Indians. This colonial legislation and mindset continued its existence in the statute books even after India becoming an independent nation. People in Rajasthan and elsewhere started strong social movements to resent the presence of such archaic and colonial legislations. The demands to enact access laws gained momentum in 1990s and as

[1] Preamble to the Constitution of India, 1950, p.1.

consequence, various state governments enacted Right to Information Acts in the years 1996-2004. Tamil Nadu was the first state in India to usher in the information regime by enacting a law on right to information in 1996. In 2000 states like Karnataka and Rajasthan followed the suit. The state of Maharashtra passed its right to information law in 2003. There were concerned voices being raised from every nook and corner of the country and the National Democratic Alliance (NDA) sensing the mood of the nation brought '*Freedom of Information Act, 2002*', which was a central legislation unlike the state Acts. This Act extends to whole of India except the state of Jammu & Kashmir. However, this law lacked many things and fell short of peoples' aspirations. In order to make access of law more effective, progressive and participatory, United Progressive Alliance (UPA) government, which came at the helm of affairs at centre in 2004 thought it appropriate to repeal the Act in the light of the changes suggested by National Advisory Council (NAC) and to come up with a new law incorporating all the suggestions of NAC. Enacting a better and effective access to information legislation was a commitment of UPA in its document of governance called Common Minimum Program (hereafter CMP)[2].

This new bill came to be known as '*Right to Information Bill, 2005*'. It was passed by Lok Sabha on May 11, 2005 and by Rajya Sabha on May 12, 2005. According to section 1(3) of the RTI Act, the provisions of section 4(1), sub-sections (1) and (2) of section 5 and sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once. The Act assures that remaining provisions shall come into force on the one hundred and twentieth day of its enactment. Hence, the entire Act came into force with effect from October 12, 2005. In order to appreciate the extent of impact of Central information Commission (hereafter CIC) on various public authorities, it is but natural to peruse some of the features of the '*Right to Information Act, 2005*'.

A precise but deep analysis of the Act would give the fair idea of the meaning of right to information, structures created for its implementation, their powers and functions and the interpretation ascribed to various provisions of the Act of 2005 by Commissions. Prominent and landmark decisions of Central Information Commission are also discussed in this chapter to better our understanding of the intent and potential

[2] The Common Minimum Programme says, 'the Right to Information Act will be made more progressive, participatory and meaningful' (CMP 2004:16).

of the law on access to information and the abilities and possibilities of the structures, assigned the responsibility to implement it, to impact the public authorities and instrumentalities of state. It is necessary to discuss various elements of the Act in order to find out the real impact of the statute on 'public authorities' defined in section 2(h), which includes judiciary and police in its domain.

SECTION 1: PREAMBLE TO THE ACT

It has been held in constitutional law that the freedom of speech is the lifeblood of democracy. The right to know as one of the constituents of freedom of speech assumes significance because free flow of information and ideas informs political debate. It helps in the exposure of anomalies in the governance and administration of justice in the country. Prior to the enactment of RTI Act, there were instances where right to know was made the part of various legislative initiatives. Under the *Factories Act, 1948* compulsory disclosure of information has to be ensured to the factory workers in connection with health hazards arising from their exposure to dangerous materials. The disclosure should also contain the steps taken to minimize such hazards. Likewise, the Water (Prevention and Control of Pollution) Act provides that every state will maintain a register of information on water pollution.[3] The public officials are required to provide copies of public documents to any person, who has the right to inspect them under Section 76, *Indian Evidence Act.* The *Representation of the Peoples Act* under section 33A asks the candidates to furnish in their nomination papers the information in the form of an affidavit. This affidavit must contain: (i) educational qualifications (ii) financial assets held by the candidate and (iii) the criminal antecedents. The intent and spirit of all the above mentioned provisions in various Indian statutes were incorporated and given a required impetus by the passing of access to information law in India in 2005.

Democracy requires an informed citizenry and transparency of information for its efficient functioning, to contain corruption and to hold governments and their instrumentalities accountable to the governed. The Preamble to this law therefore provides that it is:

[3] See section 25(6) of Water (Prevention and Control of Pollution) Act.

> An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.[4]

The preamble foresees situations where conflicting interest may start competing with each other. There is every possibility of the revelation of information conflicting with other public interests. The Preamble desires to harmonise these conflicting interest while preserving the ideal of democracy. It says:

> And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information...[A]nd whereas it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal.

Preamble makes it expedient to provide certain information to citizens who desire to have it. Though, prior to *Keshvananda Bharti v. State of Kerala*[5], preamble was not considered to be the part of the Act, but now it is fully treated as the part of the Act. In the *Keshavanda Bharti* case, the Supreme Court was confronted with a question as to whether preamble to the Constitution is part of it or not. It held that preamble is a part and parcel to the Constitution. Though the case relates to the preamble to the Constitution but the basic idea upheld in the case would be equally applicable to the other legislations. Hence, its importance in the scheme of a statute cannot be denied. It spells out the objectives of the legislation, which judiciary and other bodies like CIC, entrusted with the job of interpreting RTI Act must take account of.

SECTION 2: STATEMENT OF OBJECTS AND REASONS OF THE RTI ACT

According to the established legal principles, 'Statement of Objects and Reasons' is not treated as part of the legislation. However, it certainly gives idea as to what was the intention and purpose of the legislature at the time of its passage. The Statement of Objects and Reasons to the *Right to Information Bill, 2005* are as under:

> In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to

[4] Preamble, Right to Information Act, 2005, page 1-2, Gazette of India, published by Ministry of Law and Justice.
[5] See AIR 1973 SC 1461.

be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law.

In the initial stage of the Statement Objects and Reasons, the main emphasis is on the need to bring more efficient law. The need arises in the event of NAC and other public spirited organizations like CHRI and MKSS proposing to bring drastic changes in the *FOI Act, 2002*. The later part declares that changes to the FOI Act, 2002 must be consistent with constitutional provisions. Justifying the case for repeal of the existing Act of 2002, Statement of Objects and Reasons states:

> The important changes proposed to be incorporated ... consistent with the constitutional provisions; and effective mechanism for access to information and disclosure by authorities, etc. In view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act, 2002. The proposed legislation will provide an effective framework for effectuating the right to information recognized under Article 19 of the Constitution of India.

It is a well recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute and which effectuate the object of the legislature. In interpreting a statute the court cannot ignore its aim and objects.[6] If the words of the legislation are clear enough then recourse to statements of objects and reasons is not taken while interpreting the statute. It is not admissible as an aid to the construction of the statute and can only be referred to for the limited purpose of ascertaining the circumstances which actuated the mover of the Bill to introduce it and the purpose for doing so.[7] However, the statement of objects and reasons is relevant when the object and purpose of an enactment is in dispute or uncertain. A statement of objects and reasons is not a part of the statute. Therefore, it is not relevant in the cases, where language of the statute leaves no room for ambiguity.[8]

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[6] See *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar*, AIR 1963 1207.
[7] See *A.C. Sharma v. Delhi Administration*, AIR 1973 SC 1227.
[8] See *State of Haryana v. Chanan Mal*, AIR 1976 SC 1654.

SECTION 3: TITLE AND SCHEME OF THE ACT

The title of an Act is part and parcel of the Act itself. The title of this Act is clear worded, which says that it relates to right to information and it reads as '*The Right to Information Act, 2005*'. As far as the scheme of the Act is concerned, it consists of six chapters. The chapter I deals with preliminary things, chapter II talks of right to information and obligations of public authorities, chapter III entails the provisions with regard to Central Information Commission, chapter IV deals with the State Information Commission, Chapter V prescribes the powers and functions of the Information Commission, appeal and penalties and finally chapter VI tackles with some miscellaneous provisions.

The chapter I deals with short title, extent, commencement and definitions of certain words used in the Act. Section 2(f) gives the definition of 'information' and right to information is defined in section 2(j) of the Act. Section 1(3) talks of the extent of the Act and says that it extends to whole of India except the state of Jammu & Kashmir. The chapter basically deals with definition clauses and contains word, which would be occurring frequently in the body of the Act with having the same meaning unless otherwise specifically mentioned in some other context.

The chapter II delves into the realm of right to information and obligations of public authorities. Public authority is defined in section 2(h), which says, '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 notification issued or order made by the appropriate Government, and includes any- (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government. Section 3 of the Act provides that subject to the provisions of this Act, all citizens shall have the right to information. As it is clear from the language of the provision, this right is only provided to citizens of India as words used in section 3 are 'all citizens' and not 'all persons'. Thus, it is evident from section 3 that the Act confers the right to information only on the citizens and not on the foreigners.

The section 6 of this chapter deals with the request of the citizens for obtaining information while section 7 provides for the disposal of such request. Section 8 is important in the sense that it mentions nine grounds for exemption from disclosure of information. Commissions, activists and common people must be very clear about these provisions for non-disclosure as the restricted interpretations pose a serious danger of somehow legalising secrecy and confidentiality. These restrictions must not go beyond the restrictions prescribed in Article 19(2) of the Constitution, which places limitation on the freedom of speech and expression.

Chapter III has provisions which establish Central Information Commission (CIC), wherein constitution, terms of office, conditions of service and the procedure for removal of chief information commissioner or information commissioner are given. Similarly, chapter IV provides for the establishment of state information commission. Chapter V describes the powers and functions of the Information Commission; the procedure for appeal against the order of CPIO to Central Information Commission and the penalties for refusing to receive an application for information without any reasonable cause etc.

Chapter VI of the Act, which is the last chapter, like many other statutes, deals with miscellaneous matters. Section 21 of this chapter provides for protection of action taken in good faith whereas section 22 lays down that this Act shall have overriding effect, which says, 'The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the *Official Secrets Act, 1923*, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act'. The intention behind this provision is to encourage the free flow of information. Section 23 bars the jurisdiction of courts to entertain any suit, application and other proceedings in respect of any order made under this Act. This provision would help in implementing the orders of CIC without any hindrance from the courts. It is a common experience that public authorities go seek recourse to courts to delay in implementing the orders. But with specific bar on the powers of courts to entertain any suit or application with regard to order made under this Act, the efficacy of the Act would increase many folds.

The section 24 of this chapter restricts the application of the Act to 18 intelligence and security organisations specified in second schedule to this Act. It provides that, '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.' No information can be sought from these organisations 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.[9].

The list of these organisations is given in the Annexure I. Sections 27 and 28 empower appropriate government and the competent authority to make rules to carry out the functions of this Act. Section 30 is very important because it empowers the central government to remove difficulties arising in the smooth implementation of the law on access to information. Section 31, which is the last provision of the *Right to Information Act, 2005* repeals the *Freedom of Information Act, 2002* as it was suffering from lots of incongruities and shortcomings. Therefore, government of India thought it fit to repeal the *FOI Act, 2002.*

SECTION 4: APPLICATION OF THE ACT

The Act is applicable in respect of public authorities established, owned and substantially financed by the central government, the state governments and the administration of the Union Territories including panchayats, municipalities and other local bodies. The Act in itself is a complete code. It can be broadly divided into two parts- (i) Substantive law and (ii) Procedural law. Section 3 along with sections 8, 9, 10, 18, 19 and 30 deals with substantive law while section 6 along with section 7 deals with procedural aspect of the law. In terms of enforcement and implementation, the Act provides for the creation of information commission that, with wide powers to hear appeals, can order the disclosure of information.

[9] Proviso to section 24(1), Right to Information Act, 2005.

SECTION 5: RTI ACT, 2005: MEANING OF RIGHT TO INFORMATION

In order to utilize the right to information law to the maximum, it is necessary to know what meaning is prescribed to right to information under the Indian access to information legislation. Section 2(f) gives the definition of 'information'. According to it:

> Information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, 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 other law for the time being in force.

This provision enlarges the scope of the meaning of information and has included within its precincts every conceivable document. The most striking provision in this section is that it brings private bodies within the scope of RTI, if the information from the private body can be assessed by public authority under any other. The 'Right to Information' is defined in section 2(j) of the Act as:

> 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 the right to- (i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) 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.

Looking section 2(f) and (j) in congruence would give the broad expansion to the concept of right to information. These two sections have to be kept in mind by implementing authorities. The one is incomplete without the other. Holistic and harmonious approach is required while interpreting the meaning of right to information.

SECTION 6: WHAT IS PUBLIC AUTHORITY?

As per the Indian access to information legislation, information can only be sought from public authorities. In other words, the Right to Information Act, 2005 is applicable on the public authorities. Therefore, it is good to know what is meant by public authority. Knowing the meaning of it would save time and energy, which one can waste on filing RTI application to the bodies, which are not covered by the Act. Public authority is defined in section 2(h) of *Right to Information Act, 2005*. It says:

> 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 notification issued or order made by the appropriate Government, and includes any- (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

The interpretation given to public authority in right to information law assumes importance because of the fact that it will determine the extent of applicability of the law. It should be given broad meanings as given to the word 'state' in Article 12 of the Constitution of India. Article 12 says that:

> Unless the context otherwise requires, 'the state' includes the Government and Parliament of India and the Government and the Legislatures of each the States and all local or other authorities within the territory of India or under the control of the Government of India.

Judiciary over the period of time has broadly defined the term 'State'. It has extended the term 'other authorities' in Article 12 to include all the instrumentalities of state, which are substantially controlled and financed by the government of India or the state. In *D.C.M. Ltd v. Assistant Engineer (H.M.T sub-division), Rajasthan State Electricity Board, Kota*[10], the Supreme held Rajasthan Electricity Board as State within the meaning of Article 12 and hence it is amenable to the writ jurisdiction under Article 226 of the Constitution. Similarly, Delhi Transport Corporation was also held to be the state.[11]The definition was so extended that SC observed that a private body which is an agency the state may be a state within the meaning of Article 12.[12] The same yardsticks and interpretations can be applied while giving meaning to the terms 'public authority' within the meaning of section 2(h) of the Right to Information Act, 2005. Now, discussion of few decisions of CIC interpreting the scope of 'public authority' would be beneficial in the larger interest of bettering our understanding of the applicability of the Act.

In the case of *Navneet Kaur vs. Electronics & Computer Software Export Promotion Council*[13], the applicant had filed an application under the RTI Act with Electronics & Computer Software Export Promotion Council. The council argued that it is not covered by RTI Act as it is not a public authority within the meaning of

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[10] AIR 1988 Raj. 64.
[11] *D.T.C. v. Mazdoor Congress*, AIR 1991 SC 101.
[12] *Star Enterprises v. City and Industrial Development Corporation of Maharashtra*, (1990) 3 SCC 280.
[13] Appeal No. ICPB/A-8/CIC/2006, dated 22/3/2006.

section 2(h). The CIC held that council is a public authority because it is substantially financed and controlled by the Department of Information Technology (DIT) of the Central Government. Therefore, requested information cannot be denied to the applicant.

The CIC further enhanced the scope of section 2(h) in the case of *Jarnail Singh vs. Registrar, Cooperative Societies Delhi.*[14]The applicant sought some information from the Registrar, Cooperative Societies (RCS) in connection with the alleged irregularities in the allotment of a house to him by a cooperative group housing society. The management of the cooperative society argued that it is not a public authority within the meaning of section 2(h). CIC held in this case that since information requested is available to the Registrar under the Delhi Cooperative Societies Act, such information can be provided to the applicant under Sections 2(f) and 2(j) of the RTI Act. Section 2(f) states that:

> Information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, 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 other law for the time being in force.

Hence, according to section 2(f), if information requested, is related to any private body, which can be accessed by a public authority under any other law, it is covered by the definition of information and therefore accessible by citizen through the public authority to which that private body will submit the information as per its obligation under the law for the time being in force. The CIC further directed that the applicant be given the required information from the cooperative under the supervision of a competent officer of the RCS.

These decisions amply define the scope of the applicability of RTI provisions on public authorities. Though cooperative society is not covered under section 2(h), its record are available for public scrutiny as these records are required to be legally submitted to a body, which is a public authority under the RTI Act. In the world, where liberalisation and privatisation dominate the economic affairs of a country, the inclusion of private bodies within the meaning of public authority is a necessity. The Central Information Commission is giving almost the same treatment and meaning to

[14] Complaint No.CIC/WB/C/2006/00302, dated 9/4/2007.

public authority as is given to the word 'State' in Article 12 of the Constitution by the Supreme Court of India. As already observed, Supreme Court expanded the meaning of Article 12 to include all the instrumentalities of the State. Similarly, the CIC in *Pradeep Gupta v. Servants of the People Society*[15] held that three requirements have to be met for declaring a society to be a public authority within the meaning of section 2(h) of the Act. These are: i) whether accounts of a society are under the audit of the Comptroller General of India; b) whether the land was gifted to the society by the government and c) whether the control and supervision of the society is under the control of any government department. Indeed, there are strong reasons, which demand that private organisations should also come under the purview of RTI by including them into the definition of public authority. As a result of the liberalisation and privatisation the government is "withdrawing from its conventional and even sovereign functions and the private sector is increasingly assuming important public functions such as electricity supply, communication and public transport."[16] In these circumstances, it is incumbent on the part of the CIC to interpret the word 'public authority' to include all private organisations, which are involved in doing public functions.

SECTION 7: WHAT INFORMATION CANNOT BE DISCLOSED?

With the knowledge of what can be obtained under the law, it is equally important to know what information cannot be disclosed under the Right to Information Act. Section 8 makes nine exemptions and information relating to these cannot be accessed. The law says that:

> 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.[17]

Similarly, according to section 8(1) (b) no citizen is entitled to get information which has been expressly forbidden to be published by any court of law or tribunal. The disclosure of information, which will constitute contempt of court, is also forbidden from being disclosed.

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[15] Complaint No.CIC/WB/C/2006/00157, dated 01/05/2007.
[16] Saxena, Prabodh (2009), 'Public Authority and Right to Information', Economic and Political Weekly, April 18, 2009, p. 16.
[17] Section 8(1) (a), Right to Information Act, 2005.

The following information cannot also be accessed under RTI Act:

1. The information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature.

2. The 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.

3. The 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.

4. The information received in confidence from foreign Government.

5. The 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.

6. The information which would impede the process of investigation or apprehension or prosecution of offenders.

7. The 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.

8. The information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information; provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

All the above mentioned grounds for non-disclosure needs to be interpreted very carefully as any narrow interpretation of these clauses in Section 8 would legalise secrecy. In a landmark case Delhi High Court attempted to minimise any manoeuvring in the interpretation of section 8 of the RTI Act, when it held that:

> Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception ...It should not be interpreted in manner as to shadow the very right itself. ...It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1) (h) and other such provisions would become the haven for dodging demands for information.[18]

Despite these exemptions or anything contained in the *Official Secrets Act, 1923*, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. Section 8(2) provides that 'Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests'. Therefore, as per the intention of section 8(2) of the RTI, the exemptions in clause (1) of section 8 are not absolute and it allows disclosure of exempted information, if the public interest so demands.

SECTION 8: WHO CAN FILE APPLICATION?

As per the provisions of section 3 of the Act, only Indian citizens can apply for seeking information from the public authorities defined in section 2(h). This right is not available to foreigners as the provisions of the Act are very specific about the persons who can seek information. The law is that 'subject to the provisions of this Act, all citizens shall have the right to information'[19]. The words used in the legislation are '*all citizens*' and not '*all persons*'. Hence from the language of the provision, it is quite clear that Act vests only Indian citizens with the right to information. The citizen under the Act means only natural and not juristic persons like firms, companies or other corporate bodies. These legal persons, who acquire legal

[18] See WP(C) No. 3114/2007 decided on 03/12/2007.
[19] Section 3, Right to Information Act, 2005.

personality through the law, cannot claim the benefit of seeking information under the law. Only natural persons are entitled to have information from the public authority.

In *Inder Grover vs. Ministry of Railways*[20], the applicant filed a RTI application to get some information from the Railways Ministry in the capacity as the Managing Director of a company. The CIC held that since the applicant has applied on behalf of a company, which is not a natural citizen within the meaning of section 3, information cannot be provided the company. CIC differentiated in this between natural and juristic person. Corporate bodies and juristic persons cannot apply for information under the Act. It was held that representative of a corporate body cannot access information from a public authority. In another case of *D.C. Dhareva & Co. vs. Institute of Chartered Accountants of India*[21], a corporate body applied for information from a public authority. The information requested concerned to the documents of another company, which it had submit under legal requirements of furnishing information. The CIC following the reasoning given in *Inder Grover case* held that since applicant is a corporate body, it cannot access information.

Section 3 of the Right to Information Act and the above-mentioned decisions of the Central Information Commission clearly define who can apply for information from the PIOs. It is very evident from the interpretation given to section 3 that only natural persons can file application in order to seek information from public authorities.

SECTION 9: PROCEDURE OF FILING APPLICATION

Considering the attitude and mentality of the bureaucratic set-up and the literacy rate in India, the Act lays down a very simple procedure for filing a RTI application. Section 6 of the Act prescribes that:

> 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 the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to- (a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority; (b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her.

[20] CIC/OK/A/2006/00121, dated 27/06/2006.
[21] Decision No.560/IC/2007, dated 22/2/2007.

The case of *Madhu Bhaduri v. Director, DDA*[22], is worthwhile to mention to make the provision laid down in the Act clearer. The applicant requested information from the Delhi Development Authority, a public authority within the meaning of section 2(h) of the Act. She was asked to apply for the information in a particular proforma prescribed by the authority. DDA also asked from her the reason for seeking information. The CIC, interpreting Section 6(1) of the RTI Act, held that any direction to prescribe a particular format for seeking information cannot be made mandatory and it overrides the requirement of a simple application, as laid down in this section. The Commission ordered the DDA to provide her with the information asked. It was also held that asking the reasons for filing the applications is a clear violation of the principle embodied in Section 6(2) of the Act.

The law further makes it amply clear that where due to the inability of the seeker of the information, if application cannot be given in writing, the CPIO/SPIO should provide all reasonable assistance to the person making the request orally. This oral request needs to be reduced into writing by the concerned CPIO/SPIO.[23]

In the case of *Jai Kumar Jain vs. Delhi Development Authority*[24], the appellant had applied for some information from the Delhi Development Authority (DDA) in respect of certain shops leased by the Authority. The appellant had sought this information in the Hindi language. The CIC interpreted section 2(f) and section 7(9) harmoniously. Section 2(f) defines the term 'information', as 'any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force' and section 7(9) provides that, 'an information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.' The CIC basing its decision on the interpretation of these two sections directed the DDA to provide the requested information by translating it in Hindi within 25 days of the issue of its decision.

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[22] Complaint No. CIC/C/1/2006, dated 16/1/06.
[23] Proviso to Section 6(1), Right to Information Act, 2005.
[24] Appeal No.CIC/WB/A/2006/00117, dated 7/3/2006.

The law specifically bars public authorities from asking the reasons from the applicants for filing the RTI applications. Section 6(2) says that applicant is not required to give reasons for requesting the information or any personal details except, which may be required for contacting him. The information requested should be made available within 30 days and if the information is concerning life and liberty, it should be given within 48 hours. In the case of *Shekhar Singh and others vs. Prime Minister's Office*[25], the appellants had applied for information about the recommendations of the Group of Ministers for the rehabilitation of the project affected persons of the Narmada Project, according to the provisions of Section 7(1) of the Right to Information Act. Proviso to section 7(1) deals with providing information within 48 hours in the case where there is a threat to life and liberty of a person. The applicants contended since the protestors were on hunger strike there every threat to their life. The report of the ministers, which was made public, was supplied to the applicants. The Commission, however, held that for an application to be treated as one concerning life and liberty under proviso to section 7(1), it must be accompanied with substantive evidence that a threat to life and liberty exists. In the present case, the Commission rejected the application under section 7(1).

If the request for information is submitted to the APIO, then five days grace time is given so that application may reach the concerned CPIO. The time limit to provide information is 40 days in case the interests of a third party are involved in the disclosure of information.

Application fees to be prescribed must be reasonable. If further fees are required, then the same must be intimated in writing with calculation details of how the figure was arrived at. If the applicant thinks that the fee is not reasonable, he may seek review of the decision on fees charged by the PIO by applying to the appropriate Appellate Authority.

According to proviso to section 7(5) no fees shall be charged from people living below the poverty line. In the case of *Shama Parveen v. National Human Rights Commission*[26], the applicant filed a petition in NHRC. She belonged to the BPL category. She requested through RTI application the certified copies of the file notings

[25] Decision No.CIC/WB/C/2006/00066, dated 19/4/2006.
[26] Appeal No.CIC/OK/2006/00717, dated 18/4/2007.

and orders passed by the members of the commission with regard to her petition. The PIO of the NHRC ask her to submit Rs 444 as the charge of the copies to be supplied. She pleaded before the appellate authority of NHRC and contended that she belonged to BPL category and therefore could not pay the money asked by the PIO as the cost of the documents. This matter finally came to CIC, which referring to the proviso to Section 7(5) of the RTI Act held that when as per the RTI Act, the applicant was not required to pay the application fees of Rs. 10, she cannot be expected to pay Rs. 444. Therefore, CIC directed the NHRC to provide her information free of cost. But the CIC came up with a rider that public authority before supplying the documents or information to the applicant belonging to BPL category free of cost should ensure that such an applicant is a genuine seeker of information and is not working as a proxy for someone who merely wants to save money to obtain information.

Further RTI Act provides that if a PIO fails to provide information within the stipulated time, then in accordance the intent of section 7(6) of the Act, information requested should be provided free of cost. In the case of *Gita Dewan Verma v. Urban Development Department, Delhi*[27], the applicant requested for information regarding slum clearance policy from the Urban Development Department of the Delhi Government. The applicant was not given any information within the stipulated period of thirty days. The CIC held in this case that since there was a delay in replying to the information sought, the applicant should be provided information without costs as per the stipulation under Section 7(6). In the above case, the applicant was held entitled to reimbursement of deposited fee under Section 19(8) (b) of the Act.

The Indian access to information law specifically provides that reasons for rejection of the request for information must be stated by the CPIO. It is incumbent on the part of CPIO to communicate to the seeker of the information in case of rejection of his application- (i) the reasons for such rejection; (ii) the period within which an appeal against such rejection may be preferred and (iii) the particulars of the appellate authority.[28] In the case of *Dhananjay Tripathi v. Banaras Hindu University*[29], the applicant applied for information relating to the treatment and subsequent death of a student in the university hospital due to alleged negligence of the doctors. The PIO

[27] Appeal No.CIC/WB/C/2006/00182, dated 29/6/2006.
[28] Section 7(8), Right to Information Act, 2005.
[29] Decision No.CIC/OK/A/00163, dated 7/7/2006.

refused to divulge information without providing any reasons for doing so. The CIC held that denying information without stating any reasons for it would amount to malafide denial of legitimate information. Saying that information is denied under section 8(1) is not sufficient. The public authority must give the reasons for such denial. It was also held that rejecting the application without reasons would attract penalties under section 20(1) of the Act.

Under section 7(9) of the Act, the CPIO is legally bound to provide information in the form sought by the applicant unless the exercise would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

SECTION 10: CONSTITUTION OF CENTRAL INFORMATION COMMISSION

For the enforcement of the provisions of the Right to Information Act, 2005 an independent body was required. The body created under the access law should 'act as non-government arbiter which is not an interested party; an entity which could be expected to take a neutral and disinterested decision on the basis of the facts and the law.'[30] The neutrality and independence of such body are highly required for the proper discharge of its legal duties and functions. Section 12 and 13 of the Act provide for the composition and constitution of Central Information Commission. It authorizes the central government 'to constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to it under this Act'. According to section 12(2), CIC shall consist of Chief Information Commissioner (CIC) and such number of Central Information Commissioners (ICs), not exceeding ten, as may be deemed necessary. The Act requires that 'the Chief Information Commissioner and 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.'[31] CIC/IC shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory. He shall not hold any

[30] Habibullah, Wajahat, *The Hindu*, Nov. 4, 2005, New Delhi.
[31] Section 12(5), Right to Information Act, 2005.

other office of profit or connected with any political party or carrying on any business or pursuing any profession.[32]

The Central Information Commission will have its headquarter at Delhi and it may with the prior approval of the Central Government establish its offices at other places in India.[33]

A report on the functioning of the Information Commissions by Commonwealth Human Rights Initiatives observes that:

> As the independent bodies responsible for handling appeals and complaints under the Act, Information Commissions play a central role in setting the parameters of the new Act. Interpretations of the law by Information Commissions will be the most important directives on how to apply the new Act, until cases are heard by the Supreme Court and binding judgments are handed down.[34]

Under the Act, the Central and State Information Commissions have been given specific responsibilities to monitor the Act via Section 25, which makes the commissions responsible for producing annual reports. The power of Information Commissions under Section 19(8) to require public authorities to take action and comply with any part of the Act and under Section 25(3) to make recommendations for reform also clearly demonstrates that Information Commissions need to constantly monitor implementation to ensure that they can make well-informed recommendations and decisions.

SECTION 11: PROCEDURE OF APPOINTMENT OF COMMISSIONERS

The CIC and ICs are to be appointed by the President of India on the recommendation of a committee consisting of (a) the Prime Minister, who shall be the Chairperson of the committee (b) the Leader of Opposition in the Lok Sabha and (c) a Union Cabinet Minister to be nominated by the Prime Minister. Section 12(4) vests the Central Information Commissioner with general superintendence, direction and management of the affairs of Commission, who will be assisted by other ICs. The CIC may exercise all such powers and do all such acts and things which may be exercised

[32] Section 12(6), Right to Information Act, 2005.
[33] Section 12(7), Right to Information Act, 2005.
[34] CHRI Report (2006) on 'Information Commissions: Role and Responsibilities'.

or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.[35]

As per section 13(1), the Chief Information Commissioner shall hold office for five years provided that he has not attained the age of 65 years and shall not be eligible for reappointment. Similarly, every Information Commissioner shall hold office for a term of five years or till he attains the age of 65 years, whichever is earlier and shall not be eligible for reappointment as such Information Commissioner but on vacating his office he shall be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12.[36] The Act also makes provisions that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

SECTION 12: POWERS AND FUNCTIONS OF CENTRAL INFORMATION COMMISSION

The Central Information Commission (CIC) has been empowered with sufficient powers to discharge its obligations cast upon it by the right to information law. The powers and functions of CIC are given from sections 18 to 20 of the Act. Section 18(1) provides that it shall be the duty of the Central Information Commission to receive and inquire into a complaint from any person- (a) who could not submit his application as no Central Public Information Officer (CPIO) was appointed or CPIO refused to accept his application or the Central Assistant Public Information Officer (CAPIO) refused to accept his application for information or appeal for forwarding the same to the CPIO or senior officer specified in section 19(1) of the Act; (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.

[35] Section 12(4), Right to Information Act, 2005.
[36] Section 13(2), Right to Information Act, 2005.

In case the Central Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.[37] While instituting inquiry under section 18(2), CIC shall have the same powers as vested in the civil court under Code of Civil Procedure. The power includes- (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) issuing summons for examination of witnesses or documents; and (f) any other matter which may be prescribed.

The provision contained in section 18(4) makes a forceful commitment to the powers of CIC, when it mandates that:

> Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.[38]

During inquiry all records including those covered by exemptions must be handed over to CIC for examination. As per section 19(8)(a) CIC's power to secure compliance of its decisions from the public authority includes- (a) providing access to information in a particular form; (b) directing the public authority to appoint a PIO/APIO where none exists; (c) publishing information or categories of information; (d) making necessary changes to the practices relating to management, maintenance and destruction of records ; (e) enhancing training provision for officials on RTI; (f) seeking an annual report from the public authority on compliance with this law. Under Section 19(8) (b), CIC can direct the public authority to compensate for any loss or other detriment suffered by the applicant. Penalties under this law can also be imposed on the public authority by CIC. One of the important indicators of the powers of CIC is reflected by section 19(7) of the Act, which makes the decision of the Central Information Commission binding.

[37] Section 18(2), Right to Information Act, 2005.
[38] Section 18(4), Right to Information Act, 2005.

As far as the duty of the commission is concerned, it will prepare an annual report on the implementation of the provisions of this law at the end of the year and send it to the central government. Each ministry has a duty under the Act to compile reports from its public authorities and send them to the Central Information Commission. These reports would contain details of number of requests received by each public authority, number of rejections and appeals, particulars of any disciplinary action taken, amount of fees and charges collected etc. As per the intent of section 25(4), central government will table the Central Information Commission Report before Parliament after the end of each year.

If Central Information Commission feels that 'the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought, in its opinion, to be taken for promoting such conformity.'[39]

SECTION 13: SOME LANDMARK DECISIONS OF CENTRAL INFORMATION COMMISSION

Under the scheme of the Act, the function of CIC as an apex body under the Right to Information Act assumes utmost significance because it is a legal institution created for the implementation of the Act. The main job of CIC is to determine the scope and spirit of various provisions of the Act. The CIC is solely vests with the power of determining the meaning of any provision unless higher judiciary comes up with contrary interpretation of the provision. Therefore, it will always be beneficial to know the interpretation given by CIC to some of the important provisions of the Act.

The objectives to study the decisions of the Central Information Commission (CIC) on the *Right to Information Act, 2005*, are to study the decisions that the CIC delivered on the appeals and complaints which came before it as second appeals or complaints under the relevant provisions of the Right to Information Act, 2005. The aim is to analyse the most important cases or landmark orders which, authoritatively interpreted the important provisions of the Act. The attempt would be to study cases, which relates to the power and functions of CIC.

[39] Section 24(5), Right to Information Act, 2005.

The powers and functions of the CIC have been defined in sections 18, 19 and 20 of the Act. The non-compliance CIC's order in all probability would bring its ire on the public authorities and has the powers to impose penalties to implement the Act in letter and spirit. Though section 18(3) vests CIC with the powers of civil court but it cannot be used as a forum for execution of a court decree. In this regard the case of *Ajay Goel v. D.C.P*[40] is appropriate to mention. The appellant filed a complaint with the CIC under Section 18(1) (e)[41] of the RTI Act against the police department, which is a public authority within the meaning of section 2(h) of the Act. The appellant wanted CIC to help in implementing the orders of High Court against the police department. The CIC dismissed the complaint and held that it was not the appropriate forum to hear complaints for execution of a decree passed by the High Court.

The CIC has also made it quite clear that no additional information can be sought at the appellate stage. In *Mahadeo Barik and others v. General Manager South Eastern Railway, Kolkata*[42], the appellant filed an appeal against the order of the public authority, which had refused to provide him the requested information. The appeal was quite lengthy with complicated and technical legal language. The appellant sought for additional information during the appeal. The CIC held that no additional information can be sought at the appellate stage unless found to be of a nature that would require their admittance, if the same has not been brought up in the application to the public authority. It was held by the CIC that an appeal should be drafted in a simple and direct manner and must be brief and complicated legal language and repetitions must be avoided.

The CIC under section 20(2) of the Act can take disciplinary action against the appellate authority. CIC ordered disciplinary action in the case of *Dr. Anand Akhila v. Council of Scientific and Industrial Research.*[43] In this case, the applicant requested for information from the CSIR, a public authority under section 2(h). The information was refused on the ground that it was exempted under the RTI Act. The applicant was informed of the appellate authority with whom, he could file the first appeal. The

[40] Appeal No.CIC/AT/C/2006/00035, dated 28/6/2006.
[41] Section 18(1)(e) provides, 'Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person- (e) who believes that he or she has been given incomplete, misleading or false information under this Act.
[42] CIC/OK/A/2006/00069, dated 18/5/2006.
[43] CIC/EB/C/2006/00040, dated 24/4/2006.

Appellate Authority informed the applicant that disclosure is prohibited under the Act. This order was made before the applicant filing his first appeal with the appellate authority. The CIC recommended disciplinary action against the appellate officer by extending the meaning of Section 20(2) of the RTI Act.[44]

Though an appellate authority is not covered under the penal provisions of the Act but giving wider meaning to section 20(2) of the Act, the CIC held that public authority i.e. CSIR in this case, clearly failed to uphold the Act in the public interest. The CIC therefore directed the CSIR to order disciplinary action against the appellate authority under their service rules.

The CIC was confronted with the question, whether the single bench of CIC has powers to hold proceedings under the Act or whether the decisions given by single bench of the CIC are valid. The case of *Pyare Lal Verma vs. Ministry of Railways*[45] is very pertinent to discuss in this matter. The appellant challenged the delivery of judgments of the Central Information Commission by single member bench of the Commission. The CIC held that there is no provision in the RTI Act, requiring that every case that comes before the Commission should be disposed by a full bench comprising all the members of the CIC. The Commission referred to the Section 12(4) of the RTI Act and its Preamble and Statement of Objects and Reasons to rule that the single-member benches of the Commission can hear appeals and deliver the orders of the Commission.

The cases decided by the CIC, with regard to the powers and functions of Central Information Commission are important to broaden our understanding in connection with the powers and functions of CIC. Though there is a need to define each and every provision of RTI Act, but it is a matter of time. With the passage of time provisions would be clearer. The CIC should be given enough space and time to come out with better interpretation to further the cause of the movement for transparency and accountability.

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[44] Section 18(2) of RTI Act, which says, 'Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently...denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him'.

[45] Appeal No.CIC/OK/A/2006/00154, dated 29/1/2007.

CONCLUSION

There can be no two views that right to information would lead to openness in the administration. The citizens would get information about various issues and it will thus promote transparency in the government, increasing the efficiency by making officers accountable and ultimately reducing the corruption, if not eliminating the same totally. However, there is the other side of the coin also. The State is trying to deny maximum information under the exemption clauses of section 8 of the Act. As it will be seen in forthcoming chapters IV and VI of this study, the State took recourse to these exemptions frequently. Many of the cases of exceptions have been discussed in chapters IV and V, where an attempt is made to see, whether these exceptions have legalized the secrecy or have expanded the power of the State. While right to information may have opened up some spheres, in others it has expanded State power by legalizing secrecy on the grounds defined in the exceptions under section 8 of the Act. Some theorists believe that the exception reveals the norm. The RTI filed by People's Union for Democratic Rights (PUDR) is a case in point, where the Delhi government refused to give the details of the persons executed in Tihar prisons since 1947 in Delhi.[46] This was rejected on the ground of information requested having prejudicial effect on the sovereignty and integrity of India.[47] It is quite surprising that State is using the ground of exemption under clause (1) (a) of section 8 of the Act. The executions have already been done and hence information about execution poses no threat for the sovereignty and integrity of India. The similar information was provided by the Inspector General of Prisons, Pune. Therefore, there is no case for the Delhi government to deny information but it took recourse to exception clauses to deny information. The chapter V of this study has shown that exemptions given under section 8 have been used most of the time to deny information to the seeker of the information. Thus, it implies that secrecy is gaining grounds under the pretext of the exceptions given in the RTI Act.

The freedom of speech and expression is basic to and indivisible from democratic polity. As was held by SC in *Secretary, Ministry of Information and Broadcasting,*

[46] http://www.pudr.org/index.php?option=com_content&task=view&id=75&Itemid=60 accessed on July 17, 2009.
[47] Section 8 (1) (a), RTI, Act, 2005.

Govt. of India v. Cricket Association of Bengal[48], the right to free speech includes the right to impart and receive information. For ensuring right to free speech of the citizen of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. Differences of opinions, views, and ideas are essential to enable the citizens to arrive at informed judgment on all issues touching them. Hence, right to know acquires greater importance to make available all the information required by the people to become informed citizens. RTI Act has become a tool in the hands of people. With the filing of an application they can have access to any information except the exemptions made in section 8 of the Act.

Central Information Commission can play a pivotal role in the dissemination of information by broadly interpreting the provisions of the Act. Decisions delivered by CIC shows that it had interpreted various provisions, which have become landmark in the history of access to information laws. But the procedure of appointment of information commissioners needs to be reformed. Section 12(3) provides that: 'The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of- (i) the Prime Minister, who shall be the Chairperson of the committee; (ii) the Leader of Opposition in the Lok Sabha; and (iii) a Union Cabinet Minister to be nominated by the Prime Minister'. All the persons in the selection committee are political and there is every possibility of manipulation and political biases. Therefore, there should be inclusion of non-political persons also in the selection committee.

The inclusion of the CJI would make the selection process more apolitical and fairer. As far as the composition of the CIC goes, it should have been on the pattern of NHRC. If not the retired Chief Justice of India, at least a retired judge of the SC or HC should be appointed in order to strengthen the credibility of the institution. However, the Act broadens the scope for appointment. Under the provisions of the law, the government may appoint lawyers, judges, academics, journalists, bureaucrats etc. Section 12(5) provides that, 'The Chief Information Commissioner and 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', but much depends on the subjective

[48] See AIR 1995 SC 1236.

assessment of the selection committee, which at presently is totally composed of political persons.

The other point which needs our serious consideration is the seat of CIC. Section 12(7) says that, 'The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India'. If a person from extreme point of India wants to approach CIC, he has to incur huge expenses. So, there is felt a dire need to open branches of CIC at least in four corners of the country appointing more information commissioners.

The commission should be empowered to force the public authorities to implement its decisions. The powers under the Act for enforcing the Commission's orders are limited in the face of open reluctant attitude of the public authorities. Presently, the system of keeping a tab on the implementation of its decisions is not in place. There has to be a mechanism to follow up on the directions to check compliance of its decisions. In Punjab, the commission closes the case once the compliance is confirmed from the public authority. The provision should be made with regard to the powers of the CIC to monitor the compliance of its decision. This can be done by amending the Act. The entrustment of CIC with this power would go a long way in generating faith and confidence in the people about the RTI regime.

The Commission have not been provided with adequate infrastructure e.g. office, staff and funds etc. To uphold the independence of Commission and effective discharge of its duties, granting them full financial and administrative autonomy is must. The expenditure of the Commission should be charged upon the Consolidated Fund of the centre. Government has not kept up with their obligations under section 13(6)[49] of the Act to provide adequate staff. The CIC because of the paucity of space is working from two places. The offices of Chief Information Commission and other 5 commissioners are in August Kranti Bhawan, Bhikaji Gama Palace while the office on one information commissioner is in a building in the old JNU campus. At least, CIC must be given some spacious place to carry out its responsibilities under the Act.

[49] Section 13(6): 'The Central Government shall provide the Chief Information Commissioner and the Information 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 purpose of this Act shall be such as may be prescribed.

The government's attitude towards CIC would determine its attitude, response and the acceptability *vis-a-vis* right to information regime. Moreover, there is no clarity on their administrative and financial powers. The Commission has to rely on the government for all its infrastructure including physical, financial and manpower etc.[50] The Commissions' autonomy is therefore compromised and they are unable to function autonomously without being subjected to directions by any other authority under this Act.[51] Their budgets are also subject to approval by the administrative departments to the extent that the CIC has no powers of re-appropriation.[52]

The Commission like the courts must be empowered with contempt powers. The Commission already has powers of a Civil Court for limited purposes. This power should be widened so as to enable the Commission to appropriately deal with contempt matters. The head of the public authority be penalised for continued contempt of commission's orders. The penalty provisions should also be given overriding powers to decide the quantum within the parameters of the provisions of the right to information law.

Indeed, if these bottlenecks in the functioning of the CIC are removed, it will be able to work effectively for enhancing the culture and practice of transparency and accountability.

[50] In CIC, 72 posts have been created but not all have been filled.
[51] Sections 12(4) and 16(4) of RTI Act, 2005.
[52] Outcome and Recommendations of the National Convention on 'One Year of RTI' held from 13-15, Oct, 2006, CIC.

CHAPTER IV

CHAPTER IV

CENTRAL INFORMATION COMMISSION: IMPLEMENTATION OF RTI IN JUDICIARY

INTRODUCTION

The Supreme Court of India has been the precursor for initiating various judicially created fundamental rights under the part III of the Indian Constitution. It interpreted Articles 19 and 21 very broadly. These two articles specifically received maximum attention of the court. It was Supreme Court during 1970s, which upheld the right to information as being part of the constitutionally enshrined freedom of speech and expression within the meaning of Article 19. Rejecting the government claim of privilege on the correspondence between the Chief Justice of India and the Law Minister with regard to the appointment and transfer of judges it observed that:

> Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The 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 fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy (AIR 1982 SC *at* para 63)[1].

Based on this rationale the court asked the candidates in the elections to declare in the form of affidavit the information related to their educational, financial and criminal antecedents, if any[2]. In order to gauge the present impact of CIC on the judiciary, it would not be out of context to know the judiciary's early response to the right to information. This would help us analyze the present response and attitude of the judiciary. In the next section, an attempt is made to review certain cases decided by the judiciary upholding the right to information.

SECTION 1 EARLY RESPONSES OF JUDICIARY TO RIGHT TO INFORMATION

In this section some important cases decided by the Supreme Court in relation to right to information will be discussed. In earlier cases, it was held by the Supreme Court that right to information is a fundamental right under Article 19(1) (a) of the

[1] *S.P. Gupta v. Union of India* .
[2] Union of India v. Association for Democratic Reforms, AIR 2002 2112.

Constitution. But restriction under Article 19(2) can be imposed *inter alia* in the interest of the State. The question before the court in these cases was that how far and to what extent the right and the restrictions need to be balanced. The court in *Bennet Coleman and Co. v. Union of India*[3] observed:

> The constitutional guarantee of the freedom of the 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*, 385 US 374, 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" (AIR 1973 SC *at* para 168).

The U.S. Supreme Court raised the right to freedom of speech to right to read. This extension of freedom of speech to freedom to read and to be informed created a favourable environment for right to information. The Indian Supreme Court further said:

> In *Griswold v. Connecticut*, 381 US 479 (482), 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 (AIR 1973 SC *at* para 169).

This is an important development in the history of freedom of speech and expression as the right was given an extension to cover the readers also. In other words, it means that readers have a right to know. This is how right to know started getting its constitutional recognition. The right to know was further strengthened by the Supreme Court in *State of Uttar Pradesh v. Raj Narain*[4], when it observed that:

> In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The 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 (AIR 1975 SC *at* para 74).

The right to information has seen gradual progress in various judgments of the court. Every time court emphasized that it is the basic right enshrined in Article 19(1) (a) of the Constitution. With the recognition of this right by judiciary a new democratic culture of an open society came into existence. The world over every liberal democracy is moving towards this trend and India cannot claim exception to

[3] See AIR 1973 SC 60
[4] See AIR 1975 SC 865.

this era of openness and transparency. This idea of open society finds the expression in the observations of SC in *S.P. Gupta v. Union of India*[5], where it said:

> If secrecy were to be observed in the functioning of the government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open government with means of information available to the public, there would be greater exposure of the functioning of government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is clean government and powerful safeguard against political and administrative aberration and inefficiency (AIR 1982 SC *at* para 65).

The argument herein is that the governance of a democratic country must have participation of the people in the working of it. The people must feel that it is a government by them and for their benefit. The survival of a democracy becomes difficult in the environment of secrecy and confidentiality of the information. The maximum disclosure to the public should be the guiding principle of all democracies. The concept of opening the doors of the democratic institutions and processes for the public scrutiny again got strength when in *Dinesh Trivedi, M.P. v. Union of India*[6] the Supreme Court observed:

> In modern 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 ((1997) 4 SCC *at* para 16).

In the first half of 1990s, the court started saying that right contained in Article 19 (1) (a) includes right to acquire information and to disseminate it. In *Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*[7] the Supreme Court held that:

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

[5] AIR 1982 SC 149.
[6] See (1997) 4 SCC 306.
[7] AIR 1995 SC 1236.

> circulate. It is the only vehicle of political discourse so essential to democracy....the right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc...This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the state, as well as abroad, as is possible to reach (AIR 1995 SC 1236 *at* para 11).

The court further observed in this case that:

> The freedom of speech and expression is a right given to every citizen of this country and not merely to a few...Indeed, it may be the duty of the State to ensure that this right is available to all in equal measure and that it is not hijacked by few to the detriment of the rest. This obligation flows from the Preamble to our Constitution which seeks to secure to all its citizens liberty of thought, expression, belief and worship (AIR 1995 SC 1236 *at* para 53).

In another landmark case[8], the court expanded the meaning of freedom of speech and expression to the extent that it makes compulsory the disclosure of information on the following aspects in relation to his candidature:- (i) whether the candidate is convicted/acquitted/discharged of any criminal offence in the past- if any, whether he is punished with imprisonment or fine (ii) prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof (iii) the assets (immovable, movable, bank balance, etc.) of a candidate and of his spouse and that of dependents (iv) liabilities, if any, particularly whether there are any over-dues of any public financial institution or government dues and (v) the educational qualifications of the candidate.

The court reiterated the observations made in the case of *Secretary, Ministry of Information and Broadcasting, Govt. of India* case and held that:

> True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations (para 82 quoted in AIR 2002 SC 2112).

In the *People's Union for Civil Liberties v. Union of India*[9], it was held by the court that right to information is a facet of the freedom of 'speech and expression' as

[8] Union of India v. Association for Democratic Reforms AIR 2002 SC 2112.
[9] See AIR SC 2004 1442.

contained in Article 19(1) (a) of the Constitution of India. Right to information, thus, indisputably is a fundamental right. The exact expression of right to know is found in the judgment of *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*[10], where court observed that, 'all members of society should be able to form their own beliefs and communicate them freely to others. In sum, 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' [(1985) 1 SCC *at* para 51].

The above-mentioned decisions of the Supreme Court leave no scope for any ambiguity on the significance of the right to know. The Court through its judgments on Article 19 addressed the issue of the democratic deficit by empowering people to participate in the functioning of democracy equipping the citizens with the important tool of right to know. The initiatives and efforts to recognize this right under Article 19(1) (a) started in the early 1970s and continued up to 2004. Basically, it was in *Association for Democratic Reforms case* that Supreme Court finally determined the scope and extent of freedom of information. It held in this case that a candidate needs to disclose his financial, educational and criminal credentials if any to the public so that citizens can form the informed choice before electing their representative.

The judiciary gave birth to the right to information, nurtured it to flourish to the extent that sharing information with the public seems to gain importance in the scheme of the government. But judiciary's own response to the Right to Information Act, 2005 was not quite convincing. In the coming section, we would analyze whether judiciary is covered by the access to information law or it enjoys immunity from the applicability of it.

SECTION 2: RIGHT TO INFORMATION AND JUDICIARY: SCOPE AND APPLICABILITY

As seen in the foregoing section judiciary was the precursor of the right to information, when it held that right to know is the fundamental right within the meaning of expression 'right to speech' appearing in Article 19(1) (a) of the Indian Constitution. In not too distant history, application of right to information law to the

[10] See (1985) 1 SCC 641.

judiciary has been the matter of constant debates and arguments. The hidden but obvious tussle between Supreme Court and the Central Information Commission is still fresh in the memory of people. This section of the chapter will deal with the issue, whether Supreme Court, High Courts or any other court for that matter, are covered by the provisions of Right to Information Act, 2005. The controversy in relation to the applicability of the right to information to judiciary came to the fore, when an application under RTI was filed in the Supreme Court to know the assets of the judges. This controversy got complicated when the Chief Justice of India (CJI) Justice K.G. Balakrishnan stated that his office is excluded from the domain of Right to Information Act, 2005. He observed that since 'CJI is a constitutional authority. RTI does not cover constitutional authorities.'[11] In response to the remarks of CJI, Subhash C. Aggarwal and C. Ramesh filed complaints based on newspaper clippings. In their complaints they enquired whether the chief justices of Supreme Court and High Courts are covered by the provisions of the RTI Act. The application was first sent to the Department of Law and Justice from where it was sent to the Department of Personnel and Training. When the complainants did not get answers to their queries, they filed appeal with the CIC under section 19 of the Act.

If we see the provisions of the Act of 2005, one would conclude that the fact is that Section 2(h) of RTI Act, which defines 'public authority', includes the constitutional offices also. The section says:

> 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 notification issued or order made by the appropriate Government, and includes any- (i) body owned, controlled or substantially financed; (ii) non-Government organisations substantially financed, directly or indirectly by funds provided by the appropriate Government.

The above quoted provision makes it evidently clear that even if the office of CJI is a constitutional post but certainly it is a public authority within the meaning of section 2(h) of the Act. All constitutional authorities are public authorities for the applicability of the RTI Act and hence, covered by the provisions of it. The Supreme Court in *K. Veeraswami v. Union of India*[12] held that the expression 'public servant' used in the Prevention of Corruption Act, 1988 is wide enough to denote every judge,

[11] The Times of India, May 14, 2008.
[12] See (1991) 3 SCC 655.

including judges of High Court and the Supreme Court. In *Veeraswami's* case the question to decide before the Court was, whether a Judge is a 'public servant' as defined by the Prevention of Corruption Act. Justice J.S. Verma was of the view that a Judge was not 'a public servant' but a 'Constitutional functionary' and hence not covered by the Act. But all the other four Judges held the opinion contrary to Justice Verma. The majority's (Ray, Shetty, Sharma and Venkatachaliah, JJ) opinion in this case was that 'judges' are 'public authority' within the meaning of Prevention of Corruption Act. The Court held that 'A Judge of a High Court or of the Supreme Court is a 'public servant' within the meaning of section 2 of the Prevention of Corruption Act, 1947 [(1991) 3 SCC 655 *at* para 1]'. The section 2(c) (iv) of the Prevention of Corruption Act, 1998, covers 'any judge' empowered by law to discharge 'any adjudicatory functions' within the definition of public servant. The committee on Prevention of Corruption headed by K. Santhanam, a member of the Constituent Assembly that drafted the Constitution, in Committee's Report (1964) recommended 'enlargement of the definition of public servant in respect of Judges[13].'

The Indian Penal Code, 1860 also includes judges within the definition of public servant. Sub clause (3) of section 21 of the Code says that the words 'public servant denote a person falling under any of the descriptions hereinafter following, namely:- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.' Justice V.R. Krishna Iyer also is of the opinion that judges of Supreme Court and High Courts are public servants when he said:

> The Supreme Court, in a ruling of the Constitution Bench in *K. Veeraswami v. Union of India* (1991 SCC p. 655), held that the expression 'public servant', used in the Prevention of Corruption Act, is undoubtedly wide enough to denote every judge, including judges of the High Court and the Supreme Court. Judges are under the law, not above it. Your public life, and even private life to the extent it influences your judicial role, should be accountable and transparent to the public[14].

He further observed that 'all important constitutional authorities such as Judges, Ministers, the Comptroller and Auditor General, the Accountant General, the

[13] Noorani , A.G, 'Granting immunity to Judges: Against Rule of Law', The Frontline, November 12, 2008, http://www.flonnet.com.

[14] Iyer, V.R.Krishna (2008), 'Judges are public servants, not bosses', *The Hindu*, May 2, 2008, p.11.

Election Commissioner, and the Speaker of the Legislature, are a *fortiori* public servants with superior and more profound obligations (2008: 11).' The spirit of the Constitution is violated when judges claim immunity unknown to jurisprudence. Hence, the CJI as well as judges of Supreme Court and High Courts are public servants within the meaning of RTI Act.

However, when pressure was created from all the quarters, the CJI retracted back from his statement by saying that judges could not claim immunity and they are also public servants. The Parliamentary Standing Committee on Personnel, Law and Justice headed by E.M. Sudarsana Natchiappan in its report submitted that all constitutional authorities come under the Act. It further observed that 'We have examined in detail every clause of the RTI Bill 2004, and it is clear that all three wings of State - executive, legislature and judiciary - are fully covered under this Act... When Constitutional authorities like the Prime Minister and Lok Sabha Speaker were covered by the RTI Act, there was no question of any exemption for any other individual's office.[15]'

It says that the definition of a public authority as described in section 2 of the RTI Act was inclusive of the executive, legislature and judiciary. The report further said that chief justices of Supreme Court and High Courts were covered by RTI Act[16]. The recommendation and observations of the committee are important as it is committee constituted under the rules of parliamentary procedure. The committee forcefully puts its opinion when it said that, 'the Committee was very clear that all Constitutional authorities came under the definition of public authority... The pith and substance of this Act is to empower people by allowing them to seek information on those occupying high offices and making decisions which affect their lives. Any reluctance only amounts to dilution of people's right to know[17].' The above discussion adequately address the proposition that judiciary is equally amenable to the provisions of the RTI Act.

These contradictory views about the applicability of right to information law in judiciary provide us enough reason to look into the working of the judiciary. It is

[15] Hindustan Times, New Delhi, April 30, 2008, http://www.hindustantimes.com/StoryPage/StoryPage.aspx
[16] The Times of India, 14/05/2008.
[17] Hindustan Times, New Delhi, April 30, 2008, http://www.hindustantimes.com/StoryPage/StoryPage.aspx.

evident that long before the RTI Act came into being, it was the Supreme Court of India, which stressed the importance of information dissemination to the people. Unfortunately, this position of the Court has undergone a significant change after coming into force of the RTI Act. There are many instances where judiciary tried to scuttle the spirit of the law itself. In the very beginning of the enforcement of the RTI Act, the Supreme Court tried its best to exclude itself from the scope of the law. This could not happen and as result various High Courts and Supreme Court made rules that not only violate the very spirit of the law but negate the position taken by the Supreme Court in *Raj Narain* and *S.P.Gupta* cases. For instance, in a case filed by an NGO *Lok Prehri* in the Supreme Court against the Allahabad High Court rule charging Rs. 500 as the fee for a RTI application, the Court refused to interfere by saying that High Courts are empowered and well within their jurisdiction to frame rules with regard to the implementation of the Right to Information Act[18]. The Delhi High Court also used to charge Rs. 500 for a single RTI application. It also fixed a fee of Rs 50 for filing first appeal to the first appellate authority. The reason for fixing such exorbitant amount of fee is evident that Courts are not in favour of disclosing information as high fee would certainly deter the people from approaching the High Court to seek information. The un-amended rule 10 of the Delhi High Court (Right to Information) Rules, 2006 provides that, '(i) The authorized person shall charge the fee at the following rates, namely:- (A) Application fee- (i) Information not relating to Rule 4 (iv) 500 Rupees per application; (ii) Information other than (i) above 50 Rupees per application.' But with constant interference of the Central Information Commission, the Delhi High Court was persuaded to amend its rules to bring them in conformity with the intent and provisions of the RTI Act. Now the fee for seeking information from Delhi High Court is Rs. 50. This amount is still higher as compared to amount charged by other public authorities, which is normally Rs. 10 per application. Similar was the situation in lower courts in Delhi earlier. Previously, main RTI office located at Tis Hazari charged Rs. 25 per RTI application but subsequently they reduced it to Rs. 10. It is quite understandable why judiciary is charging exorbitant amount to give information under RTI. Indeed, the high fee fixed by

[18] Indian Express, New Delhi May 5, 2008, http://www.indianexpress.com/news/sc-refuses-to-interfere-with-hc-order-on-rt/305880/

judiciary to seek information would defeat the purpose of enacting such a progressive law on access to information from the public authorities.

The judiciary's treatment and attitude towards information regime and transparency in its working is not difficult to gauge from the fact that the Delhi High Court even refused to entertain RTI application which sought information on appointments of class III and class IV officers in its offices. The Court cited rules that prohibit divulging of information on administrative and financial matters. Would this trend of the judiciary auger well for the healthy life of the Right to Information? This question assumes importance because judiciary has been entrusted with the whole business of interpreting the provisions of any law. The overall response of the State institutions to any law depends on the treatment given to the law by judiciary through interpretation of the provisions of the legislation.

The Punjab and Haryana High Court also refused to part with information under RTI application where the applicant wanted to know the status of the pendency of cases including writ petitions and the number of cases remanded by the Supreme Court for rehearing or expeditious hearing. This basic information was denied by the PIO, Punjab & Haryana High Court. The PIO claimed the immunity under section 8 of the RTI Act. The PIO also cited the rule made by the High Court, which says that 'the information, specified under section 8 of the RTI and shall not be disclosed and made available.... which is not in the public domain or does not relate to judicial functions and duties of the court and matters incidental or ancillary thereto.'[19] This is in clear violation of section 8 of the Act, which prescribes no exemption of this sort. Pande observed in this regard that 'The rules of the Punjab and Haryana High Court are in violation of the RTI Act as the quoted exemption is absent from the relevant exemption section (section 8) of the RTI Act (2008 : 12). This is the clear cut negation of the RTI Act because the above-mentioned exception does not exist under Section 8 of the Act, which talks of certain exemptions, where information can be denied. The judiciary cannot develop its own laws when RTI Act is so explicit about certain exceptions.

[19] Rule made by the Punjab and Haryana High Court.

Many progressive orders of information commissions have also been stayed by various High Courts and they often question the *locus standi* of the information commissions in asking the courts for disclosing the information sought under RTI. Whatever the judiciary opinion held by the judiciary over the applicability of the RTI Act over it, the provisions are very explicit and clear, which make the judiciary amenable and answerable to the mandate of right to information law. It cannot claim immunity when other organs of the State have accepted the public scrutiny as the *mantra* of their functioning.

SECTION 3: CENTRAL INFORMATION COMMISSION AND JUDICIARY

With retraction of the stand taken by judiciary on the applicability of the provisions of the Right to Information Act, the interpretation of section 2 (h) and the decision of Supreme Court in *K. Veeraswami case*, it is evidently clear that RTI is equally applicable to the judiciary. There have been many decisions of the Central Information Commission (CIC) in relation to judiciary, which have somewhere down the line, changed the system to some extent. These decisions have made judiciary open to public scrutiny. People are filing RTI applications to know various things, which judiciary until now considered its exclusive possession and they always remain away from the public scrutiny. This part of the chapter will discuss some of the landmark decisions of the CIC, which impacted the working of judiciary.

In *Praveen Kumar v. Central Empowered Committee*[20] the applicant filed a RTI with the CPIO, Central Empowered Committee (CEC), constituted under the orders of the Supreme Court of India. He requested for information about the violation of the Wildlife Preservation Act, 1972; Forest Conservation Act, 1980; Supreme Court orders; action taken against violations, certified copies of the Statute or Act, which empowered the CEC to exempt offenders, who had admittedly violated the provisions of the Wildlife Preservation Act, 1972 as well as the Forest Conservation Act, 1980 etc. On not receiving the adequate response, the applicant approached CIC in appeal, where the major issue was whether CEC was a public authority or not. On this issue the CIC held that:

[20] Appeal no. CIC/AD/C/2009/000137, dated 12/03/2009.

> The term "Public Authority" as defined u/s 2(h) of the Right to Information Act, 2005 therefore, means any authority or body or Institution established or constituted by or under the Constitution. The Supreme Court of India is an Institution created under provisions of the Article 124 of the Constitution and is, therefore, a Public Authority within the meaning of Section 2(h) of the Right to Information Act. Hence, anybody or authority created under orders of a Public Authority; in this case, the Supreme Court of India, is also a Public Authority (CIC/AD/C/2009/000137, dated March 12, 2009 *at* para 10).

The CIC in this case held that the CEC is a public authority within the meaning of section 2(h) of the RTI Act. Therefore, it is bound to give information sought by the appellant. The CIC directed the CEC to furnish all available information as sought by the appellant in his RTI request detailing all the points within a month.

In this case a very important issue was decided by the CIC. The question was whether a body created by Supreme Court would be considered as the public authority. The CIC was of the opinion in this case that the Supreme Court of India is an institution created under provisions of the Article 124 of the Constitution. Therefore, it is public authority within the meaning of Section 2(h) of the Right to Information Act. It was held by CIC that anybody or authority, which is created under orders of a public authority, in this case, the Supreme Court of India, is also a public authority. This decision is important because it laid down a rule that anybody created by a public authority would also be a public authority under section 2(h) of the Act. This case is historic in the sense that CIC was of the opinion that authorities or bodies created by public authorities would also be a public authorities within the meaning of section 2(h) of the Act. The body i.e. CEC created by the Central Government on the orders of the Supreme Court was treated as the public authority. It has extended the meaning of public authority to include CEC to make it accountable and answerable under RTI Act.

In another case, *Ziley Singh v. Supreme Court of India*[21], the CIC asked the CPIO of the Supreme Court to provide information to the complainant within 10 days and issued a show cause as to why a penalty of Rs.250 per day from the date when the information is due to the date when the information is actually supplied, not exceeding Rs.25, 000 should not be imposed on him under section 20(1) of the RTI Act. Section 20 provides that for penalty if the PIO without any reasonable cause does not receive

[21] Appeal No. CIC/WB/A/2006/00705 dated 22/09/2006.

the application or denies giving information or knowingly gives incorrect, misleading or incomplete information. The Central Information Commission enforced the intent of the Act and made available the information sought by the appellant from the Supreme Court. Nobody is above the law. The rule of law is applicable to one and all and the Supreme Court is no exception to this established principle of jurisprudence. But there is a difference in giving information and creating information. Sometimes, the public authorities are faced with a situation, where the information requested is not available with it. No public authority is expected to create information as requested by the applicant and then give it the seeker of the information.

This difference is appreciated in the case of *Jagdish Ambedkar v. Supreme Court of India*[22], where the appellant filed a RTI in Supreme Court asking whether Assistant Commissioner of Police (ACP) in Delhi Police was competent authority to initiate an inquiry against the police officer of subordinate rank. The appellant also want to know that if the answer is in affirmative, then the provisions applicable in the Union Territory to authorise ACP to do so.

The Central Information Commission held in this case that the right to information within section 2(j) means the 'right to information accessible under this Act, which is held by or under the control of any public authority.' If this section is read carefully then it makes clear that information must be held by or under the control of any public authority. But, in the present case appellant asked the CPIO of Supreme Court to interpret or create information that is not already existing with the public authority i.e. Supreme Court. The Commission was of the view that appellant should have asked for any information held by the CPIO or for such information as is controlled by him. The information sought by the appellant is clearly a request for interpretation of a law governing the Police Department. It is because of this reason, it is not a request for information under the RTI Act and accordingly the appeal was dismissed.

The distinction between information and the interpretation of the statute requested by the appellant is crucial otherwise; the court registry will be flooded with the applications seeking legal advice from the courts. This case is also important

[22] Appeal No.CIC/WB/A/2006/00326 dated 15/6/2006.

because CIC in this case is of the opinion that any kind of application cannot be filed in any public authority seeking anything, which is not covered by the definition of right to information given in section 2(j) of the Act. Though Supreme Court is authorised by the Constitution to interpret law, but interpretation of law cannot be sought under RTI. For this proper writ petition under Article 32 or any other relevant provision of the Constitution has to be filed. The RTI law empowers citizens to seek information. It cannot be used for redressing the grievances.

The other case, which needs to be discussed, is *Subhash C. Agarwal v. Supreme Court of India.*[23] In this case the appellant filed a RTI with the CPIO of the Supreme Court relating to the statement reportedly made by Chief Justice of India. He wanted to know that who made the comment that twenty percent of the judges were corrupt. The decision by CIC in file no. 253 is pertinent to mention because it settled the law that comments made by Chief Justice of India in his private capacity are exempted from the RTI Act. The counsel of the Supreme Court appearing before the CIC argued that Chief Justice gives numerous academic statements, delivers many speeches and so on. However, he does this in his individual capacity and not in his capacity as the Chief Justice of India. Hence, this information is not available on the records of the Court. The appellant cannot be provided with the statement of CJI in his private capacity. The CIC held in the case of file no. 253 that:

> On the question raised in file No.253 appellant Shri Aggarwal is seeking information from CPIO of the Supreme Court which, as argued before us is not available with the Court. An information that is not held by a public authority cannot be provided or made available to an applicant, in this case appellant Shri Aggarwal (Appeal No.CIC/WB/A/2006/00253 *at* page 6).

The decision is of utmost significance as it lays down that Chief Justice of India's comments on the dais of the court are different from the comments made in seminars or lectures. The comments outside the court would be held to be made in his personal capacity, which is outside the domain of Supreme Court as the public authority within the meaning of section 2(h) of the Act. Since, the court is not legally bound to keep such comments as records of the court; the appellant cannot request them under RTI Act.

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[23] Appeal No.CIC/WB/A/2006/00742, 252 & 253, dated 5/10/2006.

The citizens are not only seeking to know about the internal procedures of the functioning of the court but also request information about the petitions filed in the Court and also the movement of the files. For instance, in Subhash *Chandra Aggarwal v. Supreme Court of India*[24], the appellant filed a RTI application in the Supreme Court to seek certain information. Aggrieved by the response of the CPIO of the Supreme Court, the appellant approached the CIC under the provisions of section 19 of the RTI Act, which provides for appeal against the order of CPIO or the first appellate authority. The appellant said before the Commission that the response of the CPIO was meaningless and evasive with regard to his application seeking information about the action taken on a petition filed by him before the CJI and also information on the movement of the file. The first appellate authority of the Supreme Court dismissed the first appeal holding that adequate information has been provided to the appellant and therefore he filed the second appeal in the CIC.

The appellant contended that the CPIO did not provide him the actionable information while the counsel for the CPIO of the Supreme Court informed the Commission that the information sought by the appellant fell within the jurisdiction of the High Court, which is a separate public authority not answerable to the Supreme Court.

The Commission observed that the order of the CPIO, which reads as, 'I am directed to inform you that the aforesaid complaint has been kept on record in the relevant High court file', is not a speaking order and contains little information on the disposal of the application. It held that clear cut reasons for disposing off the application must be stated in the order. Though the order fulfil in narrow terms the requirement of section 6(3)[25] of the Act dealing with information held by 'another public authority' i.e. the High Court in this case, the order lacked the information with regard to when and with what reference the application was transferred to the High Court making it impossible for the appellant to find ways to seek further information. The CIC held that the CPIO of the Supreme Court will now inform the appellant of

[24] Appeal No.CIC/A/3/2006, dated 12/12/2005.

[25] Section 6(3) of the RTI Act says, '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 connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer.'

the reference and date of the orders transferring the application to the High Court so that appellant can approach the concerned public authority i.e. High Court to get the required information.

The Commission made one thing very clear that any order made the CPIO or the first appellate authority must be the speaking order detailing the reasons for the dismissal of the application seeking information under the RTI Act. Giving reasoned order is the legal requirement under section 7(8) which reads as under:

> Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,- (i) the reasons for such rejection; (ii) the period within which an appeal against such rejection may be preferred; and (iii) the particulars of the appellate authority.

In the light of the above provision, it is obligatory on the public information officers and the first appellate authority to disclose the reasons for rejection of the application. This is also expected from them while transferring the application to another authority under section 6(3) of the Act. The case strike at the root of arbitrariness because rejection of the application without giving reasonable causes for doing so would amount to arbitrariness. The public authorities are under legal obligation to give the reasons of such rejections. The Supreme Court in many cases has held that decisions by public servants must be supported by reasons. The rule is equally applicable to the judiciary. Every decision or order of the judge must be the speaking order. Reasons must be stated to justify the decision arrived at. This is the intention of Article 14 of the Constitution, which is put into section 6(3) of the RTI Act. The interpretation given to Article 14 by the Supreme Court shows that arbitrariness is anti-thesis to rule of law. Therefore, nobody is exempted from fulfilling the mandate of Article 14 of the Constitution and the requirements of section 6(3) of the Act of 2005.

The Supreme and various High Courts have framed rules to discharge their obligations. Section 28 of the RTI Act also empowers Chief Justices of Courts to frame rules to carry out the provisions of the Act. There have been many instances, where rules framed by judiciary are inconsistent with the provisions of the Act. Therefore the question arises that in the face of such a situation, which law would prevail. The section 22 of the RTI would prevail or the rules framed under the powers

given to competent authorities under section 28 of the RTI would prevail. Section 22 of the RTI Act provides that 'The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act'. The issue of RTI Act provisions overriding other laws was settled in the case of *Manish Kumar Khanna v. Supreme Court of India*[26], where the appellant filed an application to the CPIO of the Supreme Court of India seeking the list of cases in which the death sentence was awarded by the SC with the name of convict, his address and name of his father. He also sought the names of counsel who appeared in those cases. The appellant also sought to know the dates, duration and reasons for which the matter was heard and so on. In response to this, the CPIO informed the appellant stating that subject-wise records are not maintained in the Supreme Court registry. It further asked the appellant to refer to SC website for further information or inspect the concerned files as per procedure of the Supreme Court. Aggrieved by this, the appellant filed the first appeal before the first appellate authority of Supreme Court, which observed that, 'there must be record with the Supreme Court where full name and address of the person who was finally awarded the death sentence would be available and the record would also contain the names of the counsel as also the duration of hearing.'[27] The first appellate authority allowed the appeal and ordered the CPIO to supply the information. The CPIO again contended that information is not kept in the form requested by the appellant. When the appellant did not get the required information, he approached the CIC in appeal under section 19 of the Act.

The important issues before the CIC in this case were, whether the information requested is to be provided under the Supreme Court Rules 1966 or whether these rules stand overridden in light of Sec 22 of the RTI Act, 2005 and that if the information is to be given, the form in which it is to be provided in light of Sec 7(9)[28] of the RTI Act, 2005.

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[26] Appeal No. CIC/WB/A/2006/00940 dated 7/12/2007.
[27] Appeal No. CIC/WB/A/2006/00940 dated 7/12/2007.
[28] Section 7(9) of the RTI Act, 2005 provides, 'An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question'.

The question for consideration before the CIC in this case was that whether section 22 of the Act overrides any other provision concerning dissemination of information or giving certified copies or copies of documents and other records pertaining to a proceeding conducted by a court or a tribunal. The Rules made by the Supreme Court in exercise of the powers conferred by the Constitution of India and the provisions of Right to Information Act overlap each other in certain areas. In this situation, according to one point of view the RTI being a later legislation should prevail over an earlier legislation i.e. the Supreme Court Rules. The other view is that insofar as the grant of copies of documents or records in a proceeding of a court or tribunal is concerned the Right to Information Act has to be treated as a general law and the Rules made by the Supreme Court are to be treated as a special law. Keeping in view this, the CIC held that:

> It is also noteworthy to take into account that section 22 of the Right to Information Act explicitly mentions the overriding effect of the Right to Information Act in respect of inconsistencies in the Official Secrets Act but, although it refers to any other law or any instrument having effect under that law (which would include Rules) for the time being in force, it does not make a specific mention of any other legislation. The *non-obstante clause* of the Right to Information Act does not, therefore, mean an implied repeal of the Supreme Court Rules and orders framed there-under, but only an override of RTI in case of 'inconsistency' (Appeal No. CIC/WB/A/2006/00940 dated 7/12/2007 *at* page 5).

The CIC also took recourse to the Supreme Court judgment in this regard in *R.S. Raghunath vs. State of Karnataka*[29], where the court held that, 'The general rule to be followed in case of conflict between the two statutes is that the latter abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied. (i) The two are inconsistent with each other. (ii) There is some express reference in the later to the earlier enactment. If either of these two conditions is fulfilled, the later law, even though general, would prevail (Appeal No. CIC/WB/A/2006/00940 dated 7/12/2007 *at* page 5-6).

In the present case, neither RTI provisions nor the Supreme Court Rules prohibits or forbids dissemination of information or grant of copies of records. The difference is only of the practice or payment of fee etc. Hence, there is no inherent inconsistency between the two provisions. The difference is only of the practice or payments of fees etc.The section 22 of the RTI Act provides that it will have effect

[29] AIR 1992 SC 81.

notwithstanding anything inconsistent therewith contained in any other law for time being enforced or instrument having effect by virtue in law other than this Act. Both the RTI Act and Order XII of the Supreme Court Rules provide for disclosure of information. There is no inconsistency in the rules. The Rule 2, Order XII prescribes a procedure to obtain information. The Supreme Court as the competent authority within the meaning of section 28 read with section 2(e) (ii) of the RTI Act, makes provision that the competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. The Supreme Court Rules, 1966 are there, which provide for disclosure of the information and the RTI Act allows making such rules under section 28. Analysing the provisions of Supreme Court Rules, provisions of RTI Act and the judgements of the Supreme Court on the overriding effect, the CIC held that Supreme Court Rules are valid and they would not be declared invalid as there is no inconsistency between Rules and RTI provisions.

As for the second issue of the format of the information requested, the CIC held that since information sought involves huge exercise of scrutinising thousands of judgements, it directed the CPIO to facilitate the inspection of files to the appellant. The CPIO was asked to provide copies, if the appellant after inspecting the files applies to the court under the procedure prescribed.

The *Manish Kumar Khanna case* is landmark in the sense that it sought to define and clarify the provisions of the Act and the Supreme Court Rules. The CIC was firm enough in this case to direct the CPIO to facilitate the appellant in the situation when earlier, the CPIO got away from his responsibility of disclosing information by saying easily that information in the format sought by appellant is not maintained in the registry. Whatever, the amount of hard work involved in processing the information sought by the applicant, the public authority is duty bound to provide the information to the applicant unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question[30]. The decision of CIC was more of an attempt to make Supreme Court to come under the scanner of public scrutiny.

[30] See Section 7(9) of RTI Act, 2005.

The Supreme Court is answerable to the citizen, if the information requested is held by it only. If the request of the applicant involves the assimilation and collection of information from other public authorities, not under its control, it is not bound to reply the query of the applicant under the provisions of the RTI Act. This was settled in the case of *M. Velmurugan v. Supreme Court of India*[31], where the appellant requested for information from CJI regarding the number of cases pending state wises, reasons for such a delay and the steps taken to dispose them faster. The PIO informed the appellant that information requested is not held by or under the control of PIO, Supreme Court and hence cannot provide it. He further informed the appellant that it is beyond the scope of duties of CPIO to collect information. The appellant was requested to approach High Courts and Law Departments of the concerned States to get the required information about the pendency of the cases.

The CIC held in this case that the information requested by the appellant is not held by any single public authority. The Supreme Court has rightly advised him to approach the concerned public authorities for the information that he sought. The information sought is well beyond the jurisdiction of any single public authority and the Supreme Court of India, therefore, cannot be held responsible for accessing this information from other public authorities and then giving it to the appellant. If appellant is seeking the information with regard to each and every public authority functioning as a Court in the Union of India, he will be required to make applications concerning the same to each of these public authorities. This case clarifies that Supreme Court and High Courts are separate public authorities for the application of RTI Act. Though judiciary is unified throughout the territory of India, but expecting SC to collect all sorts of information from respective High Courts would be a cumbersome and time consuming exercise. In order to save SC's time and energy, it is good to ask the appellant to approach different public authorities for the information he sought.

If the application to seek information is not connected to the Court then, it must send the request to the concerned public authority for its timely redressal. This rule contained in section 693) was further strengthened by the decision of CIC in *Gita*

[31] Appeal No.CIC/WB/A/2007/00783 dated 9/6/2007.

Dewan Verma v. High Court of Delhi[32], where the appellant wanted information in relation to Justice Usha Mehra (Retd.) Yamuna - Removal of Encroachments Monitoring Committee. The appellant wanted to know: a) Decision-making procedure followed by the Committee; b) Copy of overall action plan; c) Copies of all Committee decisions or orders for removal of (or exemption to) specific unauthorized constructions in Yamuna river area. She received the reply by CPIO of the High Court that:

> The information sought by you relates to judicial cases bearing W.P.(C) No. 2112/2002 and W.P.(C) No. 689/2004 both titled *Wazirpur Bartan Nirmata Sangh vs. Union of India*. Both the matters are pending in this court. The access to records of a pending judicial case is governed by Chapter 5-A and 5-B of High Court Rules and Orders, Vol. V. The information sought for by you cannot be supplied in view of the Rule 6 of Delhi High Court (Right to information) Rules, 2006 that reads as under: Rule 6. Information which is to be furnished and access to records shall be subject to the restrictions and prohibitions contained in rules/regulations and destruction of records in force from time to time which may have been notified or implemented by this Court." (Appeal No.CIC/WB/A/2007/00307 *at* page 1-2).

On being dissatisfied with the response of the PIO, Delhi High Court, the appellant filed the first appeal to the appellate authority of High Court of Delhi, which also dismissed the first appeal and hence, the appellant approached the CIC in second appeal under section 19 of the RTI Act. Counsel for the Delhi High Court submitted that the Committee regarding which information had been sought was created by special order and was a separate entity not part of the High Court. The Committee is not authorized to issue orders. These are issued only by the High Court and, therefore, a part of judicial records. Further, it was contended on behalf of High Court that all orders are available on the internet.

The CIC in this case held that the information sought is related to the removal of encroachment by Monitoring Committee, which is not a part of the High Court. This Committee is a public authority within the meaning of section 2(h) of the RTI Act. Therefore under the provisions of section 6(3), the registry of High Court should have transferred it to the Committee and as per the mandate of proviso to section 6(3), it should be transferred as soon as practicable and no later than five days after the receipt of the application. The applicant also needs to be informed of this transfer[33]. The CIC observed that there was failure at the level of registry of the High Court,

[32] Appeal No.CIC/WB/A/2007/00307 dated 16/03/2007.
[33] See section 6(3) (i) of RTI Act, 2005.

which remained open during the period of five days from the date of receipt of the application. It should have sent it to another public authority as mandated by section 6(3) (i) of the RTI Act. The CIC further directed the registry to pay Rs. 500 as compensation to the appellant within 15 days of the receipt of this decision by the Registrar, Delhi High Court. The importance of this case lies in the fact that CIC held the registry of the Delhi High Court responsible for not discharging its duty under section 6(3) to transfer the application, if it is related to another public authority. It's an eye-opener case for the judiciary, which tried to make the realisation to the judiciary that law is equally applicable to it also and if there is some legal duty to discharge under the provisions of RTI Act, it cannot claim exemption from discharging it.

In the initial years of the introduction of *Right to Information Act, 2005*, the Delhi High Court was very protective as far as information held or control by it is concerned. It took lot of time for the CIC and right to information activists to persuade the court to divulge the information, which is not related to judicial functions of the court. It is pertinent to discuss the case of *Kamini Jaiswal v. Delhi High Court*[34], where the appellant filed an application with the PIO, Delhi High Court seeking information about the names of class III and class IV employees recruited or employed by the High Court from 1990 to date. She also wanted to know whether any advertisement was issued for such recruitment and whether any tests or interviews or selections were done for such recruitment. In its reply the PIO of the Court said such information cannot be accessed under rule 4(iv) of Delhi High Court (Right to Information) Rules, 2006[35] which provides, 'In so far as decisions which are taken administratively or quasi judicially, information therefore, shall be available only to the affected persons.' The PIO also quoted rule 5(a) of the Delhi High Court (Right to Information) Rules, 2006, which says, 'the information specified under Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed:- (a) Such information which is not in the public domain or does not relate to judicial functions and duties of the Court and matters incidental and ancillary thereto.' The PIO said that in the light of these rules, the appellant failed to show how she was affected by the information sought for.

[34] Appeal No.CIC/WB/A/2007/00418 dated 20/04/2007.
[35] See Annexure II.

The appellant aggrieved by the decision of the PIO, filed the first appeal to the first appellate authority of the Delhi High Court. The first appellate authority decided that:

> It is submitted that the Right to Information Act provides specific conditions under which the information requested for can be denied and not for any other reason. No new rules can be made in violation of the Right to Information Act to deny information. Also no specific clause of Section 8 of the Act has been stated by the Public Information Officer...The contention of the Appellant / Applicant that the Delhi High Court (Right to Information) Rules are inconsistent with the provisions of the Act is unfounded (Appeal No.CIC/WB/A/2007/00418 *at* page 2).

The appellant aggrieved by the decision of the first appellate authority went to CIC in second appeal under section 19 of the RTI Act, requesting the Commission to provide the information as requested by her from the PIO and to take action against the PIO for denial of information by imposing penalty under section 20 of the Act. The matter for consideration for the CIC was whether the rules under which the information had been refused to the appellant are inconsistent with the RTI Act, 2005. The section 22 of the RTI Act says 'The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.' The counsel for the appellant contended that information can only be denied under the provisions of section 8 of the Act. He also cited section 6(2) which provides that '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 may be necessary for contacting him.' The counsel further argued that the rules 4(iv) and 5(a) of the Delhi High Court Right to Information Rules, 2006 are inconsistent with section 6 of the RTI Act and, therefore, ultra-vires of the Act. But the counsel for the PIO, Delhi High Court contended before the Commission that CIC does not have the power to declare a rule invalid. He cited *Manish Khanna v. Delhi High Court*, where the CIC observed that:

> Delhi High Court has the full authority to prescribe in the rules, formulated by them what has been mandated by the law and also any further rules which in its view are in the best interest of servicing the Act that are not in contradiction to any of the provisions of the law, and the authority of the Commission would be restricted to making recommendations only in this regard[36].

[36] CIC/WB/C/2006/000275 dated. 07/06/2007.

The counsel of the PIO, Delhi High Court further supported his arguments with section 28 read with section 2(e) (iii) of the RTI Act. Section 28 empowers the competent authority to enact rules to implement provisions of the Act. He said according to section 2(e) (iii) Chief Justice of High Court has powers to enact these rules and these rules were enacted under those powers.

The CIC after hearing the arguments from both the sides decided that rules 4(iv) and 5(a) of the Delhi High Court (Right to Information) Rules, 2006 are inconsistent with the provisions of RTI Act and therefore the provisions of the RTI shall have effect notwithstanding the content of the inconsistent rules. In this case the CIC took recourse to section 19(8) (a) of the RTI Act which provides:

> In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to-(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including- i) by providing access to information, if so requested, in a particular form; ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be; iii) by publishing certain information or categories of information; iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records; v) by enhancing the provision of training on the right to information for its officials; vi) (vi) (a) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4.

Basing its decision on the intent of this section, the CIC directed the registrar of Delhi High Court to take such steps as may be necessary to provide access to the information sought under section 19(8) (a) of the RTI Act to the appellant in the form in which it had been sought. Further the Commission observed that in the light of section 25(5)[37] of the RTI Act, 2005, the practice of the High Court in relation to providing access to information under this Act in terms of rules 4(iv) and 5(a) of the Delhi High Court (Right to Information) Rules, 2006[38] does not conform expressly with the provisions of the Act. Keeping in view this, the CIC recommended to the Delhi High Court to amend the rules and bring them in consistency with provisions of sections 6 and 7 of the Act.

The decision of the Central Information Commission in *Kamini Jaiswal case* persuades the court to change its practice with regard to giving information. The

[37] Section 25(5) provides, 'If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity'.

[38] See Annexure II.

information, which was to seek the names of the persons recruited by the Court, does not fall in the judicial functions category and hence liable to be disclosed under the provisions of RTI Act. The High Court not disclosing the basic information shows its reluctant attitude to bring in transparency in its working. Otherwise, this information with regard to its recruitment should have been put in the public domain. The court amending the rules would be beneficial in the public interest.

The activism of the citizens has resulted in making the working of Delhi High Court somewhat more transparent than as compared to in the initial years of the advent of right to information regime. Within the period of 3 years, the CIC has held in many decisions that Delhi High Court must disclose the cut off marks and other details *vis-a-vis* examinations conducted by it for recruiting judges for lower judiciary. In *Narendra Yadav v. Delhi High Court*[39] the appellant wanted to know the mark sheet of roll no. 131 of DJS (main) Examination held on 4th & 5th March, 2006 and mark sheet of DJS (Written) Examination held on 9th & 10th Sept. 2006. He also wanted the PIO to provide him the cut off marks in both of the above mentioned examinations. The PIO refused this information to him citing rule 5 (c) of the Delhi High Court (Right to Information) Rules, 2006. The rule provides that:

> The information specified under Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed: - (c) Any information affecting the confidentiality of any examination conducted by Delhi High Court including Delhi Judicial Service and Delhi Higher Judicial Service. The question of confidentiality shall be decided by the Competent Authority whose decision shall be final.

Aggrieved by this, the appellant filed the first appeal before the first appellate authority of the Delhi High Court, which decided his appeal by stating that, 'In view of Rule 5(c), the appeal is without merit and hence rejected.' Again being aggrieved, he approached the CIC in second appeal under section 19 of the RTI Act.

During arguments in this case, the PIO showed a note to the CIC requesting the Chief Justice of Delhi High Court whether information requested by the appellant can be disclosed to him or not. The Chief Justice directed that the matter be placed before a Committee consisting of the Hon'ble Ms. Gita Mittal J., Sh. A.K. Sikri, J. and Shri Mukul Mudgal, J. This committee on 30.10.2009 recommended as follows:

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[39] Appeal No.CIC/WB/A/2007/00124 dated 07/02/2007.

> The Committee has been consistently directing disclosure of marks and other non-confidential information to the candidates of Delhi Judicial Service Examination, Delhi High Judicial Service Examination and other examinations conducted by this Court...The confidentiality clause in Rule 5(c) of Delhi High Court (Right to Information) Rules, 2006 cannot be invoked to decline disclosure of marks obtained by a candidate in an examination. On the other hand, a candidate is entitled to know the marks obtained in an examination...We are of the opinion that the information sought by the appellant ought to be supplied to him under intimation to the Central Information Commission.

In the light of these recommendations of a Committee of Judges, it decided that the matter is now clarified and the documents requested by the appellant can be accessed under the RTI Act.

Similarly, in *Ajit Kumar Jain v. High Court of Delhi*[40], the appellant applied to the PIO, Delhi High Court to provide the marks of all 400 candidates appeared in the Delhi Judiciary Service (Main) Exam held in September, 2006 paper-wise and list of qualified candidates and their relatives, who are judges in Delhi High Court and in subordinate services. The PIO denied this information citing rule 5(c) of the Delhi High Court (Right to Information) Rules, 2006.

The appellant moved the first appeal on being aggrieved by the order of the PIO. The first appellate authority observed in its order that 'so long rule 5 (c) is in force, the competent authority decision in matters of any examination is final.' Upon this, the appellant filed the second appeal under section 19 of the RTI Act. The hard copy of the names of the candidates was provided by the PIO during the hearing of the matter. In the matter of the names of relatives of the qualified candidates in the judges of Delhi High Court and the sub-ordinate judiciary, the CIC held that since no such record is kept by the High Court, the appellant request may be treated as the suggestion to keep such records also.

The main question in this case for the consideration of CIC was, whether the information sought can be denied under rule 5(c) of the Delhi High Court (Right to Information) Rules, 2006 or does it amount to violation of the RTI Act. The CIC observed that the question is discussed in detail in its decision in *Narendra Yadav v. High Court of Delhi*[41] where the PIO, Delhi High Court showed a note requesting the Chief Justice whether information related to exams conducted by the Court can be

[40] Appeal No. CIC/WB/A/2007/00312 dated 16/03/2007.
[41] Appeal No. CIC/WB/A/2007/00124 decided on 13/12/2007.

disclosed under the RTI application. The Delhi High Court had set up a committee of Justices Smt. Gita Mittal J, Shri Mukul Mudgal J and AK Sikiri J, which agreed that such information should be disclosed. In the light of this, the Commission disposed off the appeal directing the PIO to disclose the information sought by the appellant.

Similarly in *Rashmi Bansal v. High Court of Delhi*[42], the CIC directed the PIO of Delhi High Court to provide the information related to the exams conducted by the High Court for recruiting the judges for the lower judiciary.

In the above mentioned cases, we saw the attitude and response of the higher judiciary with regard to right to information and the impact of Central Information Commission on its working. With the constant efforts and recommendations of Central Information Commission to the higher judiciary under the powers given in section 25(5) of the RTI Act, there have been visible changes in the practices and functioning of the judiciary. Now, the response of the lower judiciary to the right to information would be discussed. Certain important decisions of the CIC would be analysed, which brought systemic changes in the lower judiciary.

In lower judiciary the people are filing RTIs on diverse issues. With the increased awareness about the right to information, there has been increase in the number RTI applications filed in the lower judiciary. Most RTI applications are filed for getting the certified copies of the judgement, complaints and status of the case etc. In *N. Venkatesan v. Raj Kumar Khudania, Superintendent, CPIO, Office of the District and Sessions Judge Tis Hazari Courts*[43], the appellant requested information in form of the certified copies of the judgment delivered in the case of *Lt Col. Srinivas v. Subha Srinivas* to the PIO of the District and Sessions Judge, Tis Hazari Courts. In response to this, the PIO replied that the appellant can move his application before the concerned copying agency as per the rules for obtaining certified copies after paying necessary charges. The appellant approached first appellate authority in the Tis Hazari Courts, which gave the order that under provisions contained in Section 22 of the Hindu Marriage Act 1955, the appellant who is not a party to the said matrimonial proceedings cannot be supplied a copy of judgment or decree. The appellate authority

[42] Appeal No. CIC/WB/A/2007/00507 dated 01/05/2007.
[43] Decision No. CIC/SG/A/2008/00064/SG/1287, Appeal No. CIC/ SG/A/2008/00064 dated 27/01/2009.

informed the appellant about the copying agency, from where he can get the certified copy under the rules prescribed by the Courts.

On being not satisfied with the information given by PIO and the first appellate authority, the appellant took the case to CIC under section 19 of the RTI Act. There the PIO contended that information cannot be provided to him because it is held by the Court. It was further contended by PIO that there is a provision for the inspection of the records with the permission of the Court and taking certified copy from the copying agency. The PIO also observed that the word 'held' occurring in Section 2(j) means 'withholding and not giving.'

The CIC held in this case that the first appellate authority had given two contradictory directions. First, that under section 22 of Hindu Marriage Act, information cannot be obtained and then observing that the appellant can get information through the copying agency of the court. The CIC further held that:

> The RTI Act at Section 22 has clearly stated, ' The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.'. Hence unless there is a provision in the RTI act to deny the information, it will have to be provided (Appeal No. CIC/ SG/A/2008/00064 *at* page 2).

The CIC also observed in this case that, if a public authority has certain other processes of accessing information then; it must be left to the wish of the citizen to use it or prefer the route of RTI Act. The CIC was of the view that, 'If Parliament wanted to restrict his right; it would have been stated in the Law. Nobody else has the right to constrain or constrict the rights of the Citizen.'

The appeal by appellant was allowed by CIC and PIO, Tis Hazari Court was instructed to provide the certified copy of the judgement. The PIO, Tis Hazari instead of implementing the decision sent this to the Litigation Branch of the Court, which challenged it in Delhi High Court. The High Court stayed the decision till further orders. This is unfortunate because instead of providing a congenial atmosphere for the nourishment of the right to information, the judiciary interfered by restricting the citizens' right to know.

In *Mahavir Prasad v. K.S. Rawat, PIO, Tis Hazari Courts, District & Sessions Judge*[44] the appellant sought information in relation to case no. 1/2008- *Vinod Kumar Sharma v. Inspector Ram Singh*, pending adjudication in the court of Shri M.K. Gupta, special Judge, CBI Court, Rohini, New Delhi. The appellant wanted a copy of the complaint filed by Vinod Kumar Sharma in the above mentioned case. He also wanted to have a copy of the reply filed by the opposite party i.e. Inspector Ram Singh of CBI and copies of all orders of the Court passed in the above said matter. The PIO replied by stating that the appellant may take the certified copies of the requested documents from the copying agency of Rohini Courts with the permission of the concerned judge. He further informed him that the information is barred under section 8(1) (h) of the RTI Act. The appellant was also informed that information requested is related to third party. Aggrieved by this, the appellant approached the first appellate authority but it failed to reply within prescribed period. The appellant filed the second appeal in the CIC under section 19 of the RTI Act. The CIC held in this case that PIO gave no justification for denial of requested information. The PIO's denial under section 8 (1) (h)[45] is also not justified. The Commission quoted the decision in a writ petition to support its stand. Justice Ravindra Bhat observed that:

> Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1) (h) and other such provisions would become the haven for dodging demands for information (WP (C) 3114/2007 *at* para 13).

The Commission quoted its previous decision in N. Venkatesan's case, where it directed the PIO to provide the certified copies of the judgement. In this case the Commission held that:

> If a Public authority has a process of disclosing certain information which can also be accessed by a Citizen using Right to Information, it is the Citizen's right to decide

[44] Appeal No. CIC/SG/A/2009/000412 dated 29/04/ 2009.

[45] Section 8(1)(h) of the RTI Act, 2005 provides, 'Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen- (h) information which would impede the process of investigation or apprehension or prosecution of offenders.'

> which route he wishes to use. The existence of another method of accessing information cannot be used to deny the Citizen his freedom to use his fundamental right codified under the Right to Information Act ...[T]here is no proviso in the Right to Information Act which restrains the Citizen's right to use it, if another route to avail information has been offered. It is a Citizen's right to use the most convenient and efficacious means available to him (Appeal No. CIC/ SG/A/2008/00064 dated 27.01.2009 *at* page 2).

In the present case the CIC directed the PIO, Tis Hazari Court to provide the required information sought by the appellant. The judiciary's attempt to shy off from the provisions of RTI Act has been defeated by the Commission.

Similarly in another case filed by Mahavir Prasad[46] he sought the information in relation to the case- *CBI v. Dharambir Khattar* in RC No. 39(A)/2003 pending in the court of special Judge, CBI, Tis Hazari Courts, New Delhi. The appellant request for copies of the FIR, charge-sheet filed by the CBI, list of witnesses, statement of public prosecution witness i.e. Sh. Brijinder Rai, IPS, ADGP, Haryana and all the orders passed by the Courts in the above mentioned case. Keeping in view the decision in the earlier case, the CIC directed the PIO, Tis Hazari to provide the requested information to the appellant.

The *Kamran Siddiqui v. Raj Kumar Khudania, PIO, District & Sessions Judge, Tis Hazari Courts*[47] is a very interesting case as in this, the appellant filed a RTI application in the administration branch and other branch offices at Tis Hazari, Rohini, Patiala House and Karkardooma Courts to know how many cadres, like Lower Division Clerk, Upper Division Clerk and Assistants etc., are posted in these courts and since how long. He also wanted the district-wise break-up of the appointments being made. The PIO called the appellant to come to his office on any working day to clarify the information sought. Aggrieved by the decision of the PIO, he approached first appellate authority, which did not reply his request in the first appeal.

The appellant took the case to the CIC in second appeal, arguing that the PIO is mistaken in asking him to visit the PIO's office and that PIO must give an appropriate reply to the appellant or give reasons for not giving the information. The PIO has a duty to give the information or give reasons for not providing the

[46] Mahavir Prasad v. PIO, Tis Hazari Courts, District & Sessions Judge, Appeal No. CIC/SG/A/2009/000411 dated 29/04/2009.
[47] Decision No. CIC /SG/A/2008/00436/2126, Appeal No. CIC/SG/A/2008/00436 dated 02/03/2009.

information. He further contended that first appellate authority is also guilty of dereliction of duty by not giving an order within the stipulated time period.

The appeal was allowed by the CIC, observing that the PIO is guilty of not furnishing information within the time specified under sub-section (1) of Section 7 by not replying within 30 days, as per the requirement of the RTI Act. It appears that the PIO's actions attract the penal provisions of Section 20 (1). The Commission also issued show cause notice to the PIO, Tis Hazari for not providing information as requested by the appellant. This decision opened the doors to transparency in the appointment of clerks etc. in the lower judiciary.

In *Rakesh Agarwal v. K.S. Rawat, PIO, Tis Hazari Courts, District & Session Judge, Tis Hazari Courts*[48], the appellant applied to the PIO, Tis Hazari Courts for copies of receipts for money paid as fine by various accused people on 10th and 11th November, 2008 and inspection of all registers, challans, records, receipts, etc, that pertain to disposal of challans in all courts. He also specified the period for which the information was requested. The PIO enclosed copies of all the documents related to first query but in relation to query no. 2, he asked him to seek the permission of the Learned Presiding Officer for inspecting the registers, challans and records of the Court and to get copies of them. The appellant not satisfied by the reply of the PIO filed the first appeal to the first appellate authority in the Tis Hazari Courts. The first appellate authority found the appeal without any merit and dismissed it. But the first appellate authority held that, the appellant may still inspect the registers/challans on payment of requisite inspection fee or copying agency charges as prescribed under the Courts' rules.

Aggrieved by the orders of PIO and first appellate authority, the appellant approached the CIC in second appeal as per section 19 of the RTI Act. The PIO contended before CIC that the Delhi High Court (Right to Information) Rules, 2006 as amended and notified on 22nd January, 2009 do not allow disclosure of such information which relates to judicial functions of the Court. The Rule 5 (a) provides that, 'The information specified in Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed: - (a)

[48] Decision No. CIC /SG/A/2009/000677/3392, Appeal No. CIC/ SG/A/2009/000677.

Such information which relates to judicial functions and duties of the Court and matters incidental and ancillary thereto.'

The Delhi High Court framed rules under section 28 RTI Act[49]. The rules framed by High Court cannot run contrary to the spirit of RTI Act. Therefore, the CIC held that:

> Rule 5(a), in effect, appears to add another ground based on which disclosure of information can be exempted. No public body is permitted under the Act to take upon itself the role of the legislature and import new exemptions hitherto not provided. The Act leaves no such liberty with the public authorities to read law beyond what it is stated explicitly. There is absolutely no ambiguity in the Act and creating new exemptions will go against the spirit of the Act. Under this Act, providing information is the rule and denial an exception. Any attempt to constrict or deny information to the Sovereign Citizen of India without the explicit sanction of the law will be going against rule of law. (Appeal No. CIC/ SG/A/2009/000677 *at* page 3).

Hence, the CIC held in this case that no competent authority has power to curtail the right given to the people by RTI Act. Therefore, it directed the PIO, Tis Hazari to provide the copies of the counterfoils to the appellant free of cost and facilitate the inspection of the relevant records by the appellant. This case is landmark in the sense that it read down the rule contained in rule 5(a) of the Delhi High Court (Right to Information) Rules, 2006 because it tried to create another category of exemption from disclosure, which is not present in section 8 of the RTI Act. Except the exemptions mentioned in this section, no other exemption can be invented by the public authorities to refuse to divulge the requested information.

The one thing which should be kept in mind while applying for information under the provisions of the RTI Act is that the information sought should qualify the requirements of the definition of 'right to information' given in section 2 (j) of the Act. The information requested should not be for seeking advice from the public authority. This point is made clear by the facts and decision of CIC in *Ram Kumar Yadav v. Raj Kumar Khudania, PIO, District & Sessions Judge, Tis Hazari Courts*[50], where the appellant sought information with regard to his FIR no.74/07 and case pending in the court of Mr. Ravindra Singh. He requested the PIO, Tis Hazari to inform him of the date and time by which hearing may be started in his case. He also

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[49] Section 28 of RTI Act, says, 'The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.'

[50] Appeal No. CIC/WB/A/2008/00991/SG dated 16/03/2009.

wanted to know the time by which the court will receive the medical report from Hyderabad, whether the hearing can start without the medical report and can his statement recorded before the medical report.

The PIO replied that the FIR no.74/07 P.S.-Shakar Pur U/S-377/511 IPC is not submitted by the I.O./SHO till today in the court. The appellant not satisfied with the reply approached the first appellate authority, which observed in its order:

> The entire information sought by him is a legal advice. Reply was sent to him that FIR no.74/07 P.S.- Shakar Pur under Section 377/511 was not submitted by the SHO in the Court. This information cannot be supplied by the PIO. Whatever other information sought by the appellant is a legal advice and beyond the scope of Right to Information Act. Appeal is devoid of merits and same is dismissed.

On being not satisfied with the order of the first appellate authority, the appellant approached CIC, which observed in the case that 'the queries of the appellant do not constitute 'information' as defined under the RTI Act. The first appellate authority's decision is correct and the appeal is not maintainable.' Hence it dismissed the appeal. The thing to be noted in this case is that seeking legal advice from the Courts is outside the purview of right to information as defined in section 2 (j) of the Act. This section clearly says that a citizen has the right to information of the things, which are held by or under the control of the public authority. Since, the advice has to be given, which is not held by or under the control of the Courts, the information seeking advice may be rejected for not falling within the meaning of right to information.

All the above mentioned case makes it evident, that there has been perceptible change in the working of the judiciary and the CIC has persuaded it to face the public scrutiny in its functioning. But a lot more is expected from the judiciary. There are positive signs emerging from the above-mentioned decisions of the CIC that judiciary with the passage of time would become more receptive to the provisions of the right to information law.

SECTION 3: IMPLEMENTATION OF RTI IN JUDICIARY

The implementation of RTI in judiciary can be gauged by knowing the attitude of judiciary with RTI applications. Judiciary is a public authority under section 2(h) of Right to Information Act, 2005. There is three-tier system in judiciary. At the lower

level are sub-ordinate courts, which are called district courts. Above this are High Court situated in every state, except north-east, where Guwahati High Court handles the cases from the seven north-east states. The Supreme Court of India is the apex court and all the courts are under its administrative supervision. The set-up of judiciary in Delhi is no different. In Delhi, at present, there are district courts working in Tis Hazari, Patiala House, Karkardooma, Rohini, Dwarka and Saket. All these courts have one main office dealing with the RTI applications in Tis Hazari Courts. The public information officer (PIO) has been appointed in this office with APIO in rest of the courts, who look after the whole process of providing information to the people. The Delhi High Court and Supreme Court have also appointed PIOs for dealing with the RTI applications. This part of the chapter would discuss the implementation of RTI at lower, middle and the apex level of judiciary in Delhi. Let us analyse their status and response to the RTI.

SECTION 3A: RESPONSE OF LOWER JUDICIARY TO RTI

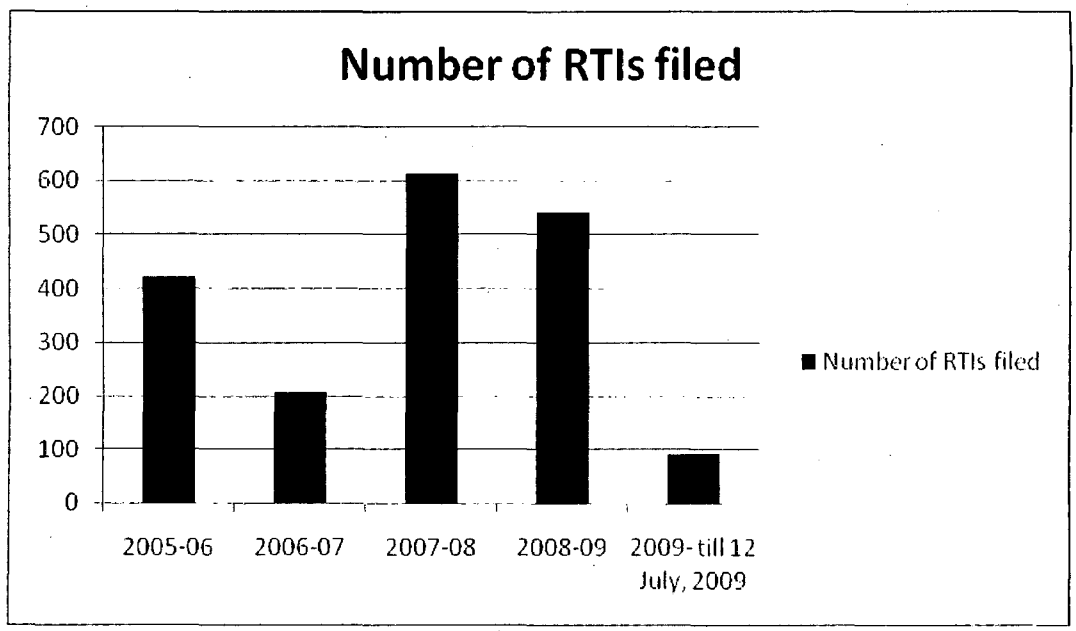
All the lower courts in Delhi situated at Tis Hazari, Patiala House, Karkardooma, Rohini, Saket and Dwarka have only one nodal office at Tis Hazari dealing with RTI applications. Mr. K.S. Rawat is the PIO, having APIOs in Patiala House, Rohini, Karkardooma and Dwarka. People file RTIs in all these courts and finally these come to main office at Tis Hazari for getting processed. The RTIs filed year-wise in all the courts are given as follows:

Table 4.1: Number of RTI application received by all Sub-ordinate courts in Delhi

S.No.	Year	Number of RTIs filed
1	2005-06	422
2	2006-07	208
3	2007-08	614
4	2008-09	542
5	2009- till 12 July, 2009	91
	Total	**1877**

Source: The Data collected from the nodal office at Tis Hazari Court dealing with RTI by researcher (Primary Survey).

Fig. 4.1: Number of RTI Applications filed from October 2005 to July 12, 2009



Source: Compiled by the researcher from Table 4.1 to show the comparative trend of number of RTI application filed during the years 2005-06 to 2008-09.

The above two charts show that, when RTI Act came into being in October, 2005, the 422 applications were in the year 2005-06. In the next year i.e. 2006-07, this number got reduced to 208. But the year 2007-08 saw a significant increase when 614 RTI applications were filed for seeking information from the district courts. Similarly, 542 applications were filed in the year 2008-09 and by the 12 July, 2009 the number of RTIs filed was 91. Till now about 1877 applications were filed and out these only 20 are pending because they were filed in the month of July, 2009. The PIO, Mr. K.S. Rawat informed that applications are disposed of same month as there is legal obligation under the RTI Act to dispose them off within 30 days of the filing of the RTI application.

According to the PIO, Tis Hazari nodal office, Mr. K.S Rawat about 50 replies by PIO out of 1877 applications received in his office were challenged in the CIC as the applicants did not feel satisfied with the response and hence they approach the CIC for the redressal of their grievances under section 19 of the RTI Act. About 20 cases, filed before the CIC as appeal, were decided against the PIO, District Courts. The most notable among them is the case known as *N. Venkatesan v. Raj Kumar Khudania, Superintendent, CPIO, Office of the District and Sessions Judge Tis Hazari*

Courts[51], where CIC directed the PIO to provide the certified copies of the judgement to the appellant. Though this case was challenged in the Delhi High Court and it stayed its implementation for some period, the PIO was found to be scared as the period of stay by the Delhi High Court is about to finish within one month and the hearing of case would resume soon. During interaction with the PIO, it was found out that the most feared decision of the CIC is *N. Venkatesan case*. The response and behaviour of the PIO shows that he was in favour of providing the certified copies through copying branch of the lower judiciary with the payment of certain amount and with the permission of concerned learned judges. The whole intent behind this is that if certified copies are allowed under RTI application, then the burden on the PIO office would increase, which the office of PIO would resist to the maximum. According to him, the decision in *N. Venkatesan case* has opened the floodgates for the applicants to request the certified copies under the right to information law.

As mentioned above that 50 decisions of PIO, Tis Hazari were challenged in CIC, which is about 2.66% of the total RTI applications filed, which is 1877. But out of these 50 challenged cases, in about 20 cases, the CIC allowed the appeals meaning thereby that these cases were decided against the PIO. In all these cases, the people were not satisfied with the response of the PIO and hence approached the CIC. The data provided by PIO, Tis Hazari indicates that 40% of the cases, which were challenged before CIC in second appeal, were allowed by the CIC. This further makes it clear that in these 40% cases justice was not done by the PIO and therefore, the applicants were compelled to take recourse to file second appeal under section 19 of the RTI Act before the Central Information Commission.

During the primary survey, it was found that adequate staff was not allocated to the PIO office. There are only two Upper Division Clerks and one Lower Division Clerk excluding the PIO in the main office situated at Tis Hazari. In other link offices in Patiala House, Karkardooma, Rohini and Dwarka there are one APIO appointed for each Court. The question arises here is that, how come these eight people, allocated the work of answering RTI applications, handle the load of increasing awareness among the people with regard to use of RTI as a tool to get the required information from the public authorities. No separate infrastructure is provided to these offices. The

[51] Appeal No. CIC/ SG/A/2008/00064.

main office in Tis Hazari is running in one part of the Room no. 4 at second floor having other offices of the Tis Hazari Courts dealing in other matters. No separate room has been given to the PIO to effectively operate in his functioning of providing adequate and within time reply of the RTI applications.

There is no proper record keeping of the applications. The one lacuna in the recording keeping is that court-wise break-up is not kept in the PIO office. The PIO was of the view that all applications are treated to be filed in lower court office, so there is no need of classifying them and showing that how many were filed from which court i.e. Patiala House, Rohini, Karkardooma or Dwarka Courts.

On being asked to provide the number of RTIs filed by the staff of the Court, the PIO could not provide the data of number of staffs, who have filed RTIs. He said that most of the staff files RTI applications on their residence address. This is because of two reasons. First, they do not want to be identified so as to minimise the chances of harassment and second, because of the decision of CIC in *Inder Grover v. Ministry of Railways*[52], where the CIC held that only natural citizen can file RTI application within the meaning of section 3 of the Act. Therefore, the employees or staff of the court would not qualify to file RTIs under section 3 of the Act. It is because of these two reasons; it is not possible to keep the records of the employees filing the RTIs. But his surmise is that, about one-fourth of RTIs coming to his office are from the employees. So, one-fourth of total RTIs i.e. 1877 would be around 469 cases. As per the PIO, the cases filed by the staff of the courts are mostly related to seeking information about promotions, pay fixation, pension, seniority list and account of the leaves. But the cases related to promotions dominate the list of RTI applications filed by the staff.

As far as the purpose of other people filing the RTIs is concerned, they mostly file them to get the copies of the complaint, certified copies of the judgements, to know the dates on which their case is coming up for hearing and the reasons for the pendency of the case for long etc. The fee of Rs. 10 for seeking information in the lower judiciary paves the way for more people coming forward to file RTIs. The higher fee fixed, for instance, by various High Courts prove to be an obstacle in the

[52] CIC/OK/A/2006/00121, dated 27/06/2006.

fulfilment of the intent of the Act to provide easy and simple procedures for getting information.

SECTION 3B: RESPONSE OF THE DELHI HIGH COURT TO RTI

The initial response of the High Court of Delhi was not good as far as the implementation RTI Act is concerned. In compliance of the requirement of section 28 of the Act, the Delhi High Court framed the rules known as 'Delhi High Court (Right to Information) Rules, 2006. Under the guise of making the rules for the implementation of the provisions of the Act, it tried to provide obstacles in the process of getting information from the PIO of Delhi High Court. First, it made a rule making a provision of Rs. 500 as the fee of filing a RTI application with the registry of the High Court. The fee was so high that CIC has to intervene and in one of the cases, it decided that the fee was not in accordance with the spirit of the provisions of RTI Act. Later, the Delhi High Court amended its provisions to fix Rs. 50 as the fee of an application. Still this fee is too high as compared to other public authorities. Most public authorities prescribe Rs. 10 as the fee of filing an application. Secondly, Delhi High Court framed under the rules various provisions, which were in conflict with the provisions of the RTI Act. It also declined to give the list and cut off marks of the applicants, who appeared and got passed in the exam conducted by High Court for recruitment in the lower judiciary. It was CIC in *Narendra Yadav v. Delhi High Court*[53] that directed the PIO, Delhi High Court to disclose the marks and other details of the candidates, who appeared in the examination. Similarly, in *Kamini Jaiswal case*, High Court of Delhi refused to divulge the information regarding III and IV grades employees recruited from 1990 till date. In this case CIC directed the PIO, Delhi High Court to disclose the information to the seeker of the information.

All these instances point towards the fact that Delhi High Court was not receptive to the RTI regime in the first instance but its attitude has undergone a significant change after the intervention of the CIC in various cases. The *Narendra Yadav, Ajit Kumar Jain and Rashmi Bansal cases,* as discussed in previous portions of this chapter, are landmark in making the PIO, Delhi High Court to change its attitude and response towards information seekers. The CIC, in the light of section 25 (5) of

[53] Appeal No.CIC/WB/A/2007/00124 dated 07/02/2007.

the RTI Act, recommended various changes in the High Court (Right to Information) Rules, 2006 to make them consistent with the provisions of the Act. This section 25(5) of the RTI Act provides that:

> If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

Keeping in consideration the recommendations of CIC under section 25 (5) of the Act, the Delhi High Court set-up a committee of Judges to review the rules. This committee came up with certain recommendations, some of which are as follows:

> The Committee has been consistently directing disclosure of marks and other non confidential information to the candidates of Delhi Judicial Service Examination, Delhi High Judicial Service Examination and other examinations conducted by this Court ...The confidentiality clause in Rule 5 (c) of Delhi High Court (Right to Information) Rules, 2006 cannot be invoked to decline disclosure of marks obtained by a candidate in an examination ...On the other hand, a candidate is entitled to know the marks obtained in an examination. We are of the opinion that the information sought by the appellant ought to be supplied to him under intimation to the Central Information Commission.

Now, let us see the response of Delhi High Court with regard to the disposal of the applications filed under the RTI Act.

Table 4.2: Number of RTI Applications filed in the Delhi High Court During 2005-06 to July 14, 2009

Serial No.	Year	RTIs filed with the PIO, Delhi High Court
1.	2005-06	120
2.	2006-07	270
3.	2007-08	274
4.	2008- till 14th July, 2009	240
	Total	**905**

Source: The Data collected from the PIO of Delhi High Court by researcher during Primary Survey for the year 2005-06 to 2008-09.

The above table shows that a total of 905 applications were filed from October, 2005 to 14 July, 2009 in the office of the PIO, Delhi High Court. In the first year of introduction of RTI, Act only 120 applications were received by the registry of the Delhi High Court. This number increased with the increase in awareness regarding the right to know. If we look at the table 4.2, it is easily noticeable that over the last 3.5 years, the filing has shown an increasing trend. Out these 905 RTIs, 31 were

challenged in CIC, where about 30 have been disposed off and one is pending disposal before the CIC.

According to the data, made available by Mr. P.S. Chaggar, PIO and Joint Registrar, Delhi High Court, most of the applicants sought to know about status of complaints filed with Chief Justice of Delhi High Court, the recruitment process and the cut off marks of the candidates in the examination conducted by High Court for lower judiciary, the request for certified copies of the judgement and the petitions. The applications by staff are mostly about the promotions, seniority list and the account of the leaves etc. As per the record shown by PIO, only two staff members have filed the RTIs for getting the information about their promotions. As compared to lower courts like Tis Hazari, the RTIs by staff in Delhi High Court are very miniscule. As observed above, lower courts received about 40% RTIs from the staff of the courts only. But the issues for RTIs are filed in the High Court and the lower judiciary are almost same. The most applications by the staff were related the promotion matters.

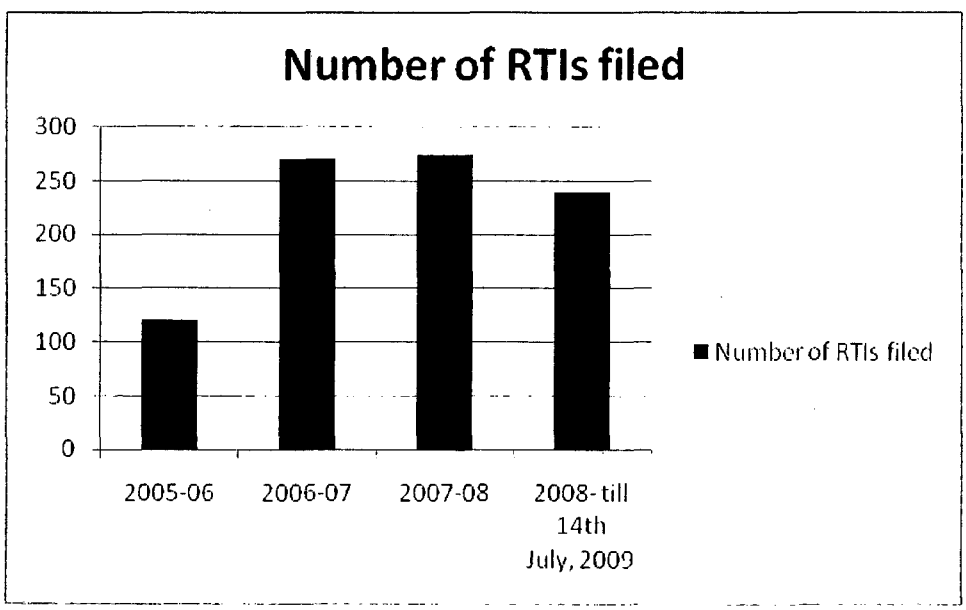
According to the PIO only 31 decisions of the PIO, Delhi High Court were challenged in the CIC, which is about 3.42% of the total of 905 applications filed from October, 2005 till 14th July, 2009. The fact of the matter is that, the track record of Delhi High Court providing information in important matters like status about the recruitment of III and IV grades employees and cut off marks got by candidates, who appeared in the Delhi Judicial Services Exam etc. has not been very encouraging. The seekers of such information had to go to CIC for the redressal of their grievances under appeal provisions contained in section 19 of the RTI Act. The CIC in many cases recommended to the Chief Justice of Delhi High Court under the powers given to CIC under section 25(5) to suggest certain changes in the rules and practices of courts especially Delhi High Court. It is not hidden from public memory that many progressive decisions of CIC, which were landmark in the sense that they changed the rules and system prevalent in the judiciary, were stayed by the High Court and hence proving detrimental to the cause of bringing transparency and accountability in the working of the judicial system in India. The observations of Prashant Bhushan sums up the response of the Delhi High Court, when he said:

> That the courts have been liberal in making pronouncements in a democracy, and have also in cases implemented it with regard to others, they have been very reluctant to

practice what they preach. The dictum appears to be that transparency and accountability is good for others, but the courts and judges are *sui generis* and in their case transparency would compromise their independence. The wand of 'independence of the judiciary' has always been waved by judges to shield themselves from accountability, going to the extent of saying that not even an FIR can be registered against judges for any offence without the prior permission of the Chief Justice of India.[54]

These double standards of the judiciary became visible after the coming into force of the RTI Act. Indeed, the response of judiciary would determine the course of action for the implementation of this law into other public authorities as it is the interpreter of the law.

Fig. 4.2: Trend of RTIs filed from 2005-06 to July 14, 2009 in Delhi High Court



Source: Compiled by the researcher from Table 4.2 to show the comparative trend of number of RTI application filed in Delhi High Court during the years 2005-06 to 2008-09.

The above figure shows that filing of RTI applications increased every year. The year 2005-06 saw less RTI application as the RTI Act was enforced from October, 2005 and people were not much aware about the right to information and the procedure of applying for seeking information. The other reason for the less filing of RTI applications was the huge fee amounting to Rs. 500. The high cost deterred many information seekers from filing the RTI applications. But with the lowering of fee to Rs. 50, there was perceptible increase in the number of RTI applications filed year after year. The lowering of the fee has an effect on the filing of RTI application and if

[54] Bhushan, Prashant (2007), 'Is Judiciary Above the Law', Combat law, March- April, 2007, p. 88.

the fee amounting to Rs. 50 is still lowered, then it would have tremendous effect on the filing of RTIs in the Delhi High Court.

SECTION 3C: RESPONSE OF THE SUPREME COURT TO RTI

As observed in section 1 of this chapter, judiciary especially the higher judiciary has been precursor for the right to information. The Supreme Court favoured the right to know since 1970s and in many cases held that it is a part of fundament right enshrined in Article 19(1) (a) of the Constitution, which guarantees freedom of speech and expression. But, with the introduction of RTI in 2005 and its application over the Supreme Court, it tried to avoid its legal duty to be open to the scrutiny of the people under the provisions of the RTI Act. In initial years of the introduction of legal right to information, the Chief Justice of India, Justice K.G. Balakrishnan observed that RTI Act is not applicable to the office of Chief Justice of India. But later, he retracted back from his statement. Still we find apex court shrouded in the secrecy and its attitude towards right to information is not encouraging at all.

When the office of the CPIO and Additional Registrar, Supreme Court of India Mr. Raj Pal Arora was approached for the data regarding how many RTIs have been filed from October, 2005 to 13th July, 2009 he declined to give the records. The CPIO argued that these sorts of records can be had from the Central Information Commission as the Supreme Court submits the records to CIC every year. The CPIO refused to cooperate and asked to file the proper RTI application to access such a record from the Court. This is not a new experience with the apex court. We see in the appeal cases, where Supreme Court was the party, that its attitude to part with the information was discouraging.

In the declaration of assets case pending before the CIC, the Supreme Court through its PIO argued forcefully to say that declaration of assets would compromise the independence of the judiciary. In an interview to CNN-IBN, the Chief Justice of India, Justice K.G. Balakrishnan said that, 'we are disclosing the assets. All the judges are giving their (declarations) but we are not giving it to public. All official assets are with the registrar. Let the judges be protected from these sorts of complaints and frivolous litigations'[55]. The Chief Justice nurtures no intention to share the assets of the judges with the common man. But it directed the Election Commission of India to

[55] Interview of Chief Justice of India, Justice K.G. Balakrishnan on CNN-IBN, www.ibnlive.in.com/video/96177/cnnibn.

frame rules to get the information regarding financial assets by the candidates contesting the elections. This direction was given in *Union of India v Association for Democratic Reform.*[56]. But when it comes to judiciary to declare its assets, it is trying to hide in the guise of independence of judiciary. It seems that rules are made for others and when the judiciary was told to come out with declaration of assets, the Chief Justice went to the extent of saying that his office is not covered by the RTI Act.

The debate initiated by Justice K.G. Balakrishnan shows the hierarchy in the Indian judicial system. While higher judiciary is trying to guard against the invocation of provisions of RTI Act, 2005 by claiming Constitutional status, the lower judiciary accepts the applicability of RTI Act on it. Does this mean that there is separation between higher and lower judiciary? How come there are separations within the same institution of State? Is lower judiciary not the part of higher judiciary? If yes, then why the distinction is made when the question of applicability of the RTI Act is concerned? The Indian judicial system is hierarchical in the sense that every sub-ordinate or lower court is bound by the decisions of the higher court. Article 141 of the Indian Constitution provides that decisions of the Supreme Court would be binding on all sub-ordinate courts. A question arises that when judiciary from *munsif* magistrate to Supreme Court is treated as a unified system, then why distinction is made between higher and lower judiciary when it comes to the issues of transparency, accountability and public scrutiny?

There is no denying the fact that, 'in a democracy all institutions, including the judiciary, must be transparent and accountable. Transparency in judicial functioning and accountability for judicial actions and inactions inspire public faith and confidence in the institution[57].' The judiciary is the sole interpreter of the provisions of the law and the law would mean what Courts decide. Therefore, it was imperative to see the functioning and response of the judiciary with regard to right to information to gauge the success of the law and impact of the Central Information Commission on judiciary. This assumes significance because the law laid down by judiciary would be binding on Information Commissions and on every organ of the government. This law

[56] Union of India v. Association for Democratic Reforms, AIR 2002 SC 2112.
[57] Aruna Roy et al, 'Judiciary should go for transparency, not secrecy'. *The Hindu*, May 7, 2008, p. 11.

to be successful needs the positive response of the judiciary, which in the present scenario is lacking as the judiciary is trying to escape the applicability of the Act.

CONCLUSION

The judiciary needs to initiate measures for effective implementation of the RTI Act for which it should frame rules as required under the Act. The judiciary could also consider giving priority to disposal of cases where public authorities have withheld information on the stay given by the judiciary on the Information Commissioners' orders. Indian judiciary needs to ponder over the observations made by U.S judge Justice Frankfurter who said:

> Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties and fallibilities. There have sometimes been martinets upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. Therefore judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt.[58]

It is quite unfortunate that the initial response of both Supreme Court and Delhi High Court was not at all encouraging with regard to the implementation of the right to information. But with the constant intervention of the CIC and its recommendations under its power given by section 25(5) of the RTI Act, there have been some perceptible changes in the rules and working of the Courts vis-a-vis Right to Information Act, 2005.

It is quite surprising that Supreme Court suggested amendment to the Act so that the second appeal in their cases may not lie before the Central Information Commission but with the Registrar General of the Supreme Court.[59] This attempt by judiciary to insulate itself from the provisions of the RTI Act would not auger well for the effective implementation of the Act. The judiciary should not be treated differently from other public authorities for the purpose of bringing transparency and accountability in its functioning.

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[58] Iyer, V.R. Krishna, 'Judges are public servants, not bosses', wwwww.hindu.com/2008/05/02/stories.

[59] Quoted in 'Outcome and Recommendations of the National Convention on 'One Year of RTI' from 13-15, Oct, 2006, CIC.

CHAPTER V

CHAPTER V

CENTRAL INFORMATION COMMISSION: IMPLEMENTATION OF RTI IN DELHI POLICE

INTRODUCTION

Policing through history has been the major concern for the structures of modern governance. In this chapter, I do not address the history of colonial policing in India, although scholars such as Bayly (1990) have helped us understand the way in which the structure of colonial policing continues to constitute the forms and techniques of policing in Independent India. I am concerned with how the new regime of information impacts practices of policing since the widespread view prevalent in the public domain is that the functioning of the police is always shrouded into the veil of secrecy. Since, police has the maximum dealing with the public; it is expected of it to be open and accountable for its actions. Police cannot be seen as a separate identity when it comes to dispensing justice to the people. It is entrusted with the job of investigating any crime committed and helping the court in solving it. Since the inception of the enforcement of the *Right to Information Act, 2005*, people have constantly taken recourse to RTIs for getting information about the status of their FIRs, copies of complaints and status thereof, copies of post-mortem and medical reports, the details of the action taken on the calls made to the Police Control Room (PCR), the number of complaints filed against individual police officers and host of other information.

The *Hashimpura massacre case*[1] is the glaring example, as to how the provisions of the RTI Act, could be used for solving a criminal case or to make the government run on toes to redress the grievances of the masses. The families of victims of *Hashimpura massacre,* on 24th May 2007, filed 615 RTI applications with the government of Uttar Pradesh to find about the postings, positions and promotions given to the Provincial Armed Constabulary (PAC) personnel, accused of massacring 42 youths of Meerut in Uttar Pradesh, on the banks of river Hindon in Ghaziabad. The applications for seeking information were filed with PIO, DGP Lucknow to know, why PAC men charged by a Delhi Sessions Court continue to be on the rolls of the

[1] This case is currently being tried in the Tis Hazari Court after the Supreme Court ordered its transfer from Uttar Pradesh for trial to Delhi Courts in 2001.

State government. They further wanted to know, whether accused are given promotions and other facilities and what were the grounds of reinstatement of 19 accused PAC personnel. They also requested the Annual Confidential Report (ACR) of all the accused in the case[2]. Vrinda Grover, a human rights activist and advocate in Supreme Court of India also filed two RTIs with the U.P. State Home Department in May, 2007, where she enquired that how many persons were indicted by the CB-CID report[3]. She got no response to her applications. But other applications under the provisions of RTI Act were answered by the authorities. The responses to RTI applications revealed very startling evidences of how these officers were reinstated and given lucrative promotions. Similarly, the affected victims in Nithari in Noida, Uttar Pradesh, have also taken recourse to RTI applications to know the progress of the case. These are just the tips of the ice-berg as RTI Act bears lot of potential for bringing effective and systemic changes in the functioning of the police.

The attitude of Delhi Police in relation to divulging of information can be gauged from the treatment given to a RTI application filed by Reena Banerjee, Director of *Nav Shrishti*, a Delhi- based NGO, requesting for the details of missing or kidnapped children in Delhi. The PIO of the South-west District RTI Cell of Delhi Police informed the applicant to submit Rs. 12, 244 for each district as the charges for collecting the information sought by her[4]. The rules, framed by the Delhi Police to enforce the provisions of the RTI Act, provide that applicant needs to give Rs. 2 per page, if the applicant has asked for photocopies of certain documents. The police department contended in this case that a lot of staff is needed for securing information sought for. As per the provisions of the RTI Act, information is to be provided for a prescribed fee regardless of how much money, time and staff members are required for furnishing such information[5].

The Delhi Police is next only to DDA in receiving maximum number of RTIs from October 2005 to December, 2007. It received 12, 229 applications for seeking

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[2] http://kafila.org/2007/08/31/hashimpura-rti-replies-expose-state-patronage-of-impunity, downloaded on July 15, 2009.

[3] http://ia.rediff.com/news/2007/sep/03bobby.htm

[4] www.citizensalliance.wordpress.com/2008/03/27/rti, 'RTI: Delhi Police reluctant to give information', March 27, 2008.

[5] Section 6(1) of RTI Act, 2005 provides, '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 the official language of the area in which the application is being made, accompanying such fee as may be prescribed.'

information. Out of these, 1,177 were challenged in the first appellate authority, which means that these numbers of applicants were not satisfied with the responses of the PIOs of Delhi Police[6]. According to one estimate, the Delhi Police also tops the list of cases, which went up to Central Information Commission in second appeal under section 19 of the RTI Act, 2005. These shocking results came to the fore in response to a batch of RTIs filed with Delhi Police to understand the trend of the Delhi Police's treatment to the Right to Information Act, 2005[7].

The RTI activism has seen an upswing in recent times. People are taking recourse to RTI applications to know the status of their complaints with the police. It is to be noted that the attitude of the judiciary and Central Information Commission with regard to interpretation of the exception clauses in Section 8 of the RTI Act, 2005 would decide the future course of action vis-à-vis success or failure of right to information. Section 8 (1) (h) of the Act says, "notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - information which would impede the process of investigation or apprehension or prosecution of offenders." What will impede the process of investigation? What will prevent the prosecution from prosecuting the offenders? And what will impede the process of apprehension of the offenders? These are some of the questions, which judiciary and the Central Information Commission will decide to determine the scope of the Act of 2005 as far as its applicability to police is concerned. The treatment given to the Act by these two institutions will be the determinant factor. The strict interpretation of exemption clauses and liberal interpretation of other provisions by these two institutions will provide a fresh breath to the movement for transparency and accountability in the coercive apparatus of the State i.e. police.

SECTION 1: RIGHT TO INFORMATION AND POLICE: SCOPE AND APPLICABILITY

Delhi is a national capital and therefore, it enjoys the special status. It is not a full- fledged state like Haryana or Uttar Pradesh but is known as National Capital

[6] http://economictimes.indiatimes.com/News/PoliticsNation/, dated 30th June, 2008.
[7] These figures were collected and complied by Kabir, an NGO working on RTI in Delhi by filling RTIs with Delhi Police.

Territory Region (NCT). The 'Police' is a matter listed in the 'State List'[8] of the schedule VII to the Indian Constitution. Delhi is also classified as the *'Union Territory*[9]', which is administered under the direct supervision of the Union Government in the name of President of India. It is because of this reason, the police department in Delhi is under the control of the Ministry of Home Affairs, Government of India and not the Government of NCT, Delhi. The Ministry of Home Affairs, Government of India is a *'public authority'* within the meaning of section 2 (h) of the Right to Information Act, 2005. As I have mentioned earlier, this section says, '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 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, directly or indirectly by funds provided by the appropriate Government.' According to section 2(a), which defines 'appropriate government', the Government of India is an 'appropriate government' for the purpose of Ministry of Home Affairs to be the 'public authority' as it is government of India, which owns, controls and provides funds for its functioning. So, reading section 2(h) with section 2 (a) of the RTI Act, it is clear that 'Ministry of Home Affairs, Government of India' is a public authority. Now, the question is whether Delhi Police would also be the public authority within the meaning of section 2 (h). The answer is in the affirmative, because the Delhi Police is under the direct control and supervision of the Ministry of Home Affairs, Government of India, which in itself is a public authority. To support this contention, invoking the decision of the Central Information Commission, as discussed in chapter IV of this dissertation, in the case of *Praveen Kumar v. Central Empowered Committee*[10] would make the confusion clear. In this case, CIC held that 'anybody or authority created under orders of a Public Authority ...is also a Public Authority' (CIC/AD/C/2009/000137, dated 12/3/ 2009 *at* para 10).

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[8] Entry 2 of the List II-State List in the VII Schedule to the Constitution says. 'Police (including railway and the village police) subject to the provisions of entry 2A of List I.' On State list matters only the state is authorised to legislate.

[9] 'Delhi' is constitutionally classified as 'Union Territory'. Part II of the Schedule I to the Constitution at serial no. 1 mentions Delhi as Union Territory and determines its extent by providing that, 'The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Delhi.'

[10] Appeal no. CIC/AD/C/2009/000137, dated 12/3/ 2009.

The decision of *Praveen Kumar case* is significant because it not only brought the public authority under the net of the purview of the provisions of RTI Act but also the bodies or authorities created under the orders of a public authority. Under these circumstances, Delhi Police is a public authority and hence amenable to the provisions of the Act. The other rationale for Delhi Police being the public authority is that it is created by the Act of Parliament through section 3, which provides that, 'there shall be one police force for the whole of Delhi and all officers and subordinate ranks of the police force shall be liable for posting to any branch of the force including the Delhi Armed Police.'[11] Therefore, again on the basis of Section 2 (h) (b), Delhi Police is a public authority as it is a body constituted by the law of the Parliament called the '*Delhi Police Act, 1978.*'

Under the provisions of the RTI Act, the Central Information Commission is entitled to hear complaints under section 18 or second appeal under section 19 of the Act. A citizen if aggrieved by the decision of the Ministry of Home Affairs, Government of India, can also approach CIC. In the same way if a citizen feels aggrieved and unsatisfied with the response of the Delhi Police; he may petition the CIC as Delhi Police is a 'public authority', which is under the direct control and supervision of Central Government. It is beyond any iota of doubt that Delhi Police like any other public authority is amenable to the provisions of the Right to Information Act, 2005.

SECTION 2: CENTRAL INFORMATION COMMISSION: THE POLICE IN DELHI

As noticed in introductory section of this chapter, the Delhi Police got the maximum applications under the RTI Act and some of them landed up in the Central Information Commission (CIC), since appeal against the first appellate authorities established by the Delhi Police lie in the CIC as per the provisions of section 19 (3)[12] of the RTI Act. In order to know the response and attitude of the Delhi Police in dealing with applications filed under the provisions of the RTI Act, it would be pertinent to review some of the landmark decisions of the CIC, which came before it, when the applicants were not satisfied with the replies given by PIOs and first

[11] See Delhi Police Act, 1978.

[12] Section 19(3) of the RTI Act, 2005 says. 'A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission.'

appellate authorities of the Delhi Police. This review of decisions would also give a fair idea of the impact of Central Information Commission in bringing systemic and behavioral changes in the functioning of the Delhi Police.

The first case deals with the response of the police with regard to a RTI application requesting details of a report submitted by Jt. Commissioner in the Delhi High Court. In *Ravinder Kumar (Advocate) v. A.K. Sinha, Joint Commissioner of Police (Vigilance), New Delhi*[13], the appellant requested the details of the full report along with its annexure I and II and other documents, which were submitted by Joint Commissioner of Police (Vigilance), Shri A.K. Sinha to the Delhi High Court in WP (Criminal) No. 1288-9/2005. He also requested the copy of the complaint made by Shri Vijender Sethi and all the endorsements by the officials of the Special Cell in relation to this case. This case started when a RTI was filed with the PIO, Delhi Police, Mr. R.C. Upadhyay, refusing the requested information on the ground that the documents requested by the applicant had been submitted to the Delhi High Court. The PIO, Delhi Police contended that the records requested are the property of the High Court and hence he could not disclose them. Aggrieved by the decision of the PIO, the appellant filed the first appeal before Mr. Y.S. Dadwal, against the decision of the PIO. When the appeal came up for hearing before the first appellate authority, the previous order of the PIO, Mr. R.C. Upadhyay rejecting the application was withdrawn by the APIO, who averred that the order is being withdrawn due to administrative reasons. Later on, a fresh order was issued by the PIO stating that the requested information would impair the process of investigation in the case registered under FIR 370/2005 dated 30/7/2005 at Police Station (PS) Kirti Nagar, New Delhi. The PIO invoked the provisions of section 8 (1) (h) of the RTI Act to deny the information. The section provides that the requested information can be withheld by the public authority, if it would impede the process of investigation or apprehension or prosecution of offenders.[14]

Under the given circumstances, the main point to decide for the CIC was whether the information requested was barred by any exemption under Section 8 of

[13] Appeal No. CIC/AT/A/2006/00005, dated 8/3/2006.

[14] Section 8(1)(h) says, 'Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,- information which would impede the process of investigation or apprehension or prosecution of offenders.'

the RTI Act. The CIC on the basis of the evidence observed that the copy of the enquiry report was given to the counsel of the petitioner in the writ petition before the High Court. Therefore, the copy of the report requested by the appellant is already in the public domain.

The CIC was of the opinion that it is beyond logic to deny the information to the appellant under the guise of exemption mentioned under section 8 (1) (h) as the report is already in the public domain and hence, it has no potential to impede the process of investigation of the case registered under FIR 370/2005 dated 30/7/2005. It held that the information requested does not attract the bar of exemption given in section 8 (1) (h) of the RTI Act. Moreover, the High Court also did not restrict the disclosure of the documents. It is therefore held by the CIC that there was no justification, whatsoever, in withholding information from the appellant. It further observed that the appellant is entitled to receive the information like the enquiry report, its annexure, statements and other connected documents submitted by Mr. A.K. Sinha to the High Court of Delhi. The CIC directed the PIO and the first appellate authority to provide all the information as requested by appellant. The case in point makes it crystal clear that police deny information, which is already in the public domain under the pretext of exemption clauses. The Central Information Commission rightly interpreted section 8 (1) (h) and upheld the 'right of the citizen to know' from the public authority what is not explicitly prohibited from disclosure by the right to information law.

The issue in *Chanchal Goel v. The Deputy Commissioner of Police, North-West District, Delhi Police, Ashok Vihar, Delhi*[15], was whether one can obtain the proceedings of with the file notings of the case. The appellant in this case requested the information about the proceeding of the case, notings of the case or order sheet of the case, copy of the compromise typed in Hindi, notings of Smt. Usha Sharma, Inspector Delhi Police, written statement of Chanchal Goel (the appellant in this case), copies of the letter sent to the legal cell and the advice of legal cell thereof.

The PIO, Delhi Police supplied some documents but withheld some of the requested documents by stating that these are barred from disclosure under exemption

[15] F.No. CIC/AT/A/2006/00338, dated 20/10/2006.

clauses provided under sections 8(1) (e)[16] and Section 8(1) (j)[17] of the RTI Act. Aggrieved by this, appellant filed the first appeal before first appellate authority, which held that all relevant documents were supplied to the appellant and that the PIO was justified in not supplying the documents, which were barred by the exemptions under section 8 of the Act. In these circumstances, the appellant approached the CIC in second appeal under the provisions of section 19 of the Act. The appellant was not satisfied with the response of the first appellate authority and hence filed the second appeal in the CIC challenging the orders of the PIO and the first appellate authority.

Perusing the facts of the case, the CIC held that documents requested by the appellant are of such a nature that did not attract the exemptions as specified in section 8(1) (e) and Section 8(1) (j) of the RTI Act. Indeed, the CIC found that the information requested by the appellant seemed to be quite harmless and hence the PIO and first appellate authority were directed by the Commission to provide the information sought by the appellant. This case shows that even the information, which is so harmless in nature, was denied to the appellant under the pretext of exemptions under section 8 of the RTI Act. Eventually, the CIC came to the rescue of the seeker of the information and persuaded the Delhi Police to part with the information.

Similarly, in *V.K. Chauhan, v. D.C. Srivastava, Deputy Commissioner of Police (North-East District) & PIO, Delhi Police*[18], the appellant filed a RTI application with the PIO, North-East District, Delhi Police, to know the present status of the investigation *vis-a-vis* F.I.R.No.574 in PS, Nand Nagri, Delhi. He was having apprehensions that his case might be closed down by the police without any investigation into his complainants. The PIO provided some information, but the appellant was not satisfied by them and he approached the first appellate authority, which ordered the disclosure of some more information but again being aggrieved, the appellant came before the CIC in second appeal. During the hearing, the PIO agreed to supply the present status of the case and an account of the actions taken on his complaints. Keeping in view the promise of the PIO, the appeal was disposed off with

[16] Section 8(1) (e) of RTI Act says, '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.'

[17] Section 8(1) (j) of RTI Act provides, 'information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.'

[18] F.No. CIC/AT/A/2006/00469, dated 28/12/ 2006.

the direction to the PIO to provide the appellant all the requested information within one week of the receipt of this order.

The case discussed above is the pointer to the fact that police is so reluctant to part with the common information, like the present status of the case and the actions taken so far in the complaints of the people, that appellant was compelled to invoke the jurisdiction of the CIC. This information could have been provided in the first instance at the level of PIO. But a lot time and energy have to be wasted because of the non-cooperative and non-transparent working of the police.

In many cases, the Central Information Commission has held that copies of the complainants' statement should readily be provided to the seekers of information but police seems to refuse to bring certain changes in its practices of hiding information from the citizens. It forgets that it is not the colonial police but a part of the democratic structure, which was so painstakingly built over decades of constant struggle by the common masses. The democracy entails the participation of people in the governance of the country. The best way to ensure this is to allow information sought by citizens. In *Inder Kaur v. Deputy Commissioner (DCP) Vigilance & Deputy Commissioner (DCP) Economic Offences Wing*[19], the appellant filed two RTI applications to DCPs Vigilance and South District dated 19/12/2008 seeking information about the residential address of the complainant and the accused. The appellant also wanted to know where the husband of the accused used to work and where did the accused Kulwant Singh Narang used to work before and after the death of the complainant's husband. The other query of the appellant was, whether the business by the family is a joint business or single person business according to the complaint. The appellant, not satisfied with the response of the PIOs, brought the matter to CIC in second appeal in File Nos. CIC/WB/A/2009/00462 and CIC/WB/A/2009/00476.

The facts of the case show that in File no. CIC/WB/A/2009/00462, the appellant was informed by the PIO, DCP (Vigilance) that information requested is barred from disclosure under section 8 (1) (e) of the RTI Act. On being dissatisfied with the response, the appellant approached the first appellate authority, which

[19] Appeal No. CIC/WB/A/2009/00462 & 00476 dated 31/3/2009 & 8/4/2009.

reiterated the stand taken by the PIO and held that the copy of the complaint and the statement of the complainant recorded during the vigilance enquiry as well as appellant's request for inspection of the file were rightly denied under the provisions of the of the RTI Act.

In her second appeal before the CIC, the appellant contended that since, it is a complaint, which can be converted into a FIR, it cannot be exempted from disclosure and secondly the copy of the complaint and the statement of the complainant are always provided to the accused as per the law. The appellant further argued that section 8 (1) (e)[20] of the RTI Act does not apply to police complaints.

In File no. CIC/WB/A/2009/00476, the matter was sent to the Economic Offences Wing (EOW) of Delhi Police on 3/12/08. The appellant was refused the information on the pretext of sub-clauses (g) and (h) of Section 8 (1) of the RTI Act. Aggrieved by the response of the PIO, the appellant went in first appeal before the first appellate authority, which upheld the decision of the PIO stating that information requested constituted important evidence and its disclosure may endanger the life and personal safety of the person concerned. And hence it is exempted under section 8 (1) (g)[21] of the Act.

The appellant also brought this before the CIC, where the appellant contended that section 8 (1) (g) does not apply to FIRs, where investigation is already completed. The above two files were clubbed together and heard by the CIC.

During the hearings of the clubbed appeals, the appellant argued that the investigation in a case registered with PS Kotla Mubarakpur, New Delhi was over and this was submitted to the Court in an affidavit in *State v. Kulwant Singh*, FIR No. 544/05 dated 6/6/2008 stating that, 'Investigation Officer further states that except for depositing the aforesaid affidavit with FSL for comparison of signature appearing thereupon, nothing further remains qua investigation.'[22] Therefore in these circumstances, the copy of the complaint and the statement of the complainant can be

[20] Section 8(1) (e) of RTI Act provides, 'Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen-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.'

[21] Section 8 (1) (g) provides, 'Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen-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.'

[22] Appeal No. CIC/WB/A/2009/00462 & 00476 dated 31/3/2009 & 8/4/2009.

disclosed as requested. But the respondent contended that although, the PS Kotla Mubarakpur has concluded its investigation, the investigation is still in progress in the Economic Offences Wing through Crime Branch of the Delhi Police and therefore, investigation cannot be said to be concluded. Disclosure of the information sought by appellant Inder Kaur would therefore, impede the process of investigation by opening the complainant and others concerned to pressure from appellant. The respondent also submitted that the FSL report is still awaited and pre-mature disclosure of the information sought would also impede the processing of the FSL report. The respondent i.e. PIO, Delhi Police also argued that under the provisions of Cr. P.C. the copy of the complaint cannot be given to anyone other than the complainant.

In the light of the facts of the case, the issue for consideration for the CIC was whether the copy of the complaint and the statement of the complainant can be disclosed to the appellant. The key issue before the CIC in this case was the release of the copy of the complaint together with the statement of the complainant recorded before the PS Kotla Mubarakpur. The CIC quoted its earlier decision in *Prashant Bhushan vs. Deputy Commissioner Police (DCP), Crime & Railways*[23] on the issue of disclosure of FIRs to the accused. The issue in this case was, whether the FIR on the encounter at Batla House, New Delhi can be given to anyone other than the accused. The respondent contended that copy of FIR cannot be given to any person other than the complainant or the accused as Cr. P.C has provisions, which restricts the availability of the copy of FIR only to the complainant or the accused. On being asked by the CIC, whether there is a bar in law to provide FIR to persons other than complainant or accused, the respondent conceded that there was no such restriction in section 154(2) of Cr. P.C[24]. So, the commission held that the FIR is a 'public document' and hence accessible through RTI application. The CIC also invoked the judgment of Gujarat High Court in Jayat *Bhai Lalu Bhai Patel v. State of Gujarat*[25], where denial of a copy of FIR was held to be violative of the principles of natural justice and Article 21 of the Constitution.

[23] Appeal No. CIC/WB/A/2009/0023 announced 9/3/2009.
[24] Section 154(2), Cr. P.C says, '(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.'
[25] 1992 Cr LJ 2377 (Guj).

Therefore, considering the above facts, the CIC decided that a copy of the complaint/FIR cannot be denied to the appellant. It also held that, so far the statement of the complainant is concerned, it may be possible that its disclosure would compromise the security under section 8 (1) (g) and therefore, exempted from disclosure at this stage with the investigation still proceeding. It further observed that the disclosure of the statement of the complainant might impede the investigation and thereby the subsequent prosecution. The CIC held that complaint should be disclosed as mandated by the RTI Act read with the provisions of Cr. P.C and directed the PIO to give the copy of the complaint to the appellant. The most important aspect, which emerged through this decision, is that denial of FIRs to the citizens on the completion of the investigation would amount to be the violation of the principles of natural justice and Article 21 of the Constitution. The CIC brought the constitutional context into the paradigm of right to information. Somewhere, this decision has equated the non-disclosure of FIRs as violation of fundamental rights.

Indeed, the decision in *Inder Kaur v. Deputy Commissioner (DCP) Vigilance & Deputy Commissioner (DCP) Economic Offences Wing*[26] would go a long way in defining the scope and extend of the right to information with regard to the police. The police cannot withhold the disclosure of FIRs and statements of complainants, if the investigation is completed. It was the intervention of CIC that brought a change in the practice of police, where it does not feel obliged to share information with the masses. Now, in the *post- Inder Kaur case* scenario and strict interpretation of the exemption clause by CIC, it is incumbent on the part of the police to part with information, which hitherto was considered by the police as their exclusive possession.

The *Prashant Bhushan vs. Deputy Commissioner Police (DCP), Crime & Railways* and *Inder Kaur case* settled the law that the copy of FIR or complaint or if the investigation is over, the copy of the statement of the complainant cannot be denied on the pretext of exemptions prescribed in section 8 of the RTI Act. One interesting trend visible through all these cases is that, the CIC is broadening the concept of disclosure by strictly interpreting the exemptions under section 8. Otherwise, the intent and spirit of the Act would fizzle out with the passage of time

[26] Appeal No. CIC/WB/A/2009/00462 & 00476 dated 31/3/2009 & 8/4/2009.

erasing the confidence and faith of the citizens in the right to information law and the efficacy of the information commissions.

One of the important provisions in the Indian access to information law is with regard to transfer of applications, if it pertains to any other public authority. Section 6(3) casts a duty on all public authorities to transfer such applications to the concerned public authority for its proper disposal. The *Inderjit Singh Sawhney v. Deputy Commissioner of Police, (Crime Against Women Cell) case*[27]is very crucial on this point. The facts of the case were that appellant filed an application under RTI provisions to seek information from Deputy Commissioner of Police, PIO, Crime Against Women Cell (CAW), Nanakpura, New Delhi to get the copies of complaint filed by his wife, Ms. Puneet Kaur, the copies of the entire proceedings conducted by CAW Cell, FIR, statements of the complainant, witnesses and appellant and copies of investigations and opinion of Dr. Rajat Mitra made during the proceedings. The APIO on behalf of the PIO refused the disclosure of the requested information on the ground of exemption prescribed in section 8 (1) (h) of the Act. Aggrieved by the denial, the appellant filed the first appeal before ACP to set aside the orders of the PIO. But, the first appellate authority reiterated the decision of the PIO by saying that decision dated 19/2/2007 of the PIO, CAW is justified and such information can be withheld under section 8(1) (g) of the RTI Act.

An enquiry into the complaint of matrimonial discord had been conducted in the CAW Cell, Nanakpura on the complaint of Ms. Puneet Kaur. The wife of the appellant filed a complaint in the CAW, which after enquiry recommended the registration of case. It was registered *vide* FIR No. 838/06 under sections 498-A and 406 IPC in PS Rajouri Garden, Delhi pending investigation. The Commission held that in the present circumstances, when the investigation is still not over, the supply of the copy of the complaint, which is FIR now and other documents, except the statement of the accused will be detrimental to the investigation and hence these documents can be denied under the exemption clause contained in section 8 (1) (h) of the RTI Act. It further held that the copy of the FIR can only be given to the appellant once the investigation in the case is over and the charge-sheet is filed in the trial court. The Commission also directed the PIO, CAW to give the statement of the appellant.

[27] Appeal No.CIC/WB/A/2007/01019 dated 4/11/2007.

When the respondent informed the CIC that complaint and enquiry report had been submitted to the trial court, the Commission directed the respondent to transfer the application of the appellant to the trial court under the provisions of section 6(3), which casts a duty on the public authorities to transfer the application to the concerned public authority, if the information asked pertains to the latter public authority. Section 6(3) provides that, "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 connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as 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 practicable but in no case later than five days from the date of receipt of the application." It is clear from the facts of the case that trial court is now the public authority to which the information sought is more closely connected and therefore, the CIC directed the respondent to transfer the application to the PIO of the competent trial court for its further disposal.

Very often the citizens wish to know the contents of the enquiry reports prepared by the police on the conclusion of investigations in the crimes committed. The *Prem Peyara v. The Deputy Commissioner of Police & PIO, South West District, Delhi Police, New Delhi*[28], is a case, which clarified the law on the disclosure of enquiry reports. In this case CIC made it amply clear that concluding parts of the investigating officer's report must be disclosed to the seeker of the information after deleting the names of witnesses and other deponents. In this case, the appellant through a RTI application filed with PIO wanted to know about the complaint lodged on 7/5/2004 with the SHO, Police Station Vasant Kunj, New Delhi in relation to a certain entrustment of fire arms by the appellant to his daughter, Ms. Mugdha Sinha, IAS for the purpose of renewal of the fire arms license at Jaipur for one NPB .32 Bore Revolver make Webbley No.4556; one DBBL Gun 12 Bore make Belgium No.51323 and two swords. The appellant's daughter allegedly did not return the fire arms to the appellant. In his application, the appellant asked for twenty items of information

[28] F. No. CIC/AT/A/2006/00354, dated 1/11/2006.

including whether the Investigating Officer (IO) before registering the FIR no.954/04 verify or investigate the matter if it comes under section 498-A IPC or not, details of daily dairy which can show the kind of investigation undertaken by the IO/SHO concerned regarding the complaint dated 7/5/ 2004 of the appellant, the reasons for not registering a criminal case against the appellant's daughter, who is IAS officer and her mother, the copy of the FIR no.954/04 PS Vasant Kunj under section 498-A IPC. He also wanted to know whether the IO filed the charge-sheet for the case under FIR no.954/04 PS, Vasant Kunj, if yes, then the date on which the charge-sheet in F.I.R. no.954/04 P.S. Vasant Kunj has been filed and in which court the F.I.R. no.954/04 P.S. Vasant Kunj has been filed. These were some of the major queries of the appellant.

The PIO gave the appellant the point-wise reply but feeling aggrieved by the order, the appellant approached AA, who also upheld the order of the PIO. The AA also held that all the admissible information had been made available to the appellant including the status of his complaint dated 7/5/2004. The PIO also informed that the allegations in the complaint of the appellant could not be substantiated and therefore, the matter was left as filed. Upon getting this response of the PIO, the appellant approached Patiala House Court under section 156(3), Cr. P.C[29] to request the court to ask the police to investigate his case and register the FIR. The matter is *sub-judice.*

Keeping in consideration the facts of the case, the Commission observed that the AA was justified in not disclosing the details of the Daily Dairy (DD) of the investigating officer or SHO with regard to the appellant's complaint dated 7/5/2004 under section 8(1) (g). It further held that the disclosure would amount to the breach of the fiduciary relationship between the officer ordering an enquiry and the officer who held the enquiry. It also clarified that the final conclusion, arrived at in the enquiry, is liable to be disclosed to the appellant, which was suitably conveyed to the appellant by the PIO in his reply dated 24/3/2006.

The commission on perusing the records found that all the queries of the appellant had been answered point-wise by the PIO satisfactorily. The CIC is upheld

[29] Section 156(3) Cr. P.C says, 'Any Magistrate empowered under section 190 may order such an investigation as above mentioned.' If the police have not registered the case and a person feels aggrieved, he may approach the courts to request to order an investigation in some matter. If the court is satisfied with the plea of the applicant, it may order investigation and later on registration of the FIR.

the contention of the AA that the appellant could be given the concluding parts of the report and not the full reports of the investigating officer.

In the light of the facts of the case in consideration, the CIC directed the PIO to supply, within two weeks from the receipt of this order, the concluding parts of the IO's report, which contained his findings.

The CIC also held that the AA was correct in not disclosing the details of the DD, which contained in it, the names and addresses of informants, witnesses and other contacts of the police authorities. This sort of non-disclosure is allowed under the provisions of section 8(1) (g). It says, "Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen - 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." The Commission in various other similar cases had held this view. Therefore, the CIC rejected the appeal of the appellant except that the PIO would provide the concluding parts of the investigating officer's report. Hence, it is a settled law that concluding parts omitting the names of the witnesses and other persons must be disclosed under the provisions of the Act.

Almost similar were the facts in *Suresh Kumar v. The Deputy Commissioner of Police, New Delhi District, Delhi Police, Parliament Street, New Delhi & others*[30], where the appellant filed a RTI application for seeking the certified copy of the report. This request was rejected by both PIO and the AA on the ground of exemption under section 8(1) (g) arguing that the disclosure of the contents of the report would put the witnesses examined in the enquiry to risk. Section 8(1) (g) exempts disclosure of information 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.'[31]

Considering the facts of the case, the CIC observed that "the disclosure of the identities of witnesses examined in course of the enquiry as well as those who assisted in the enquiry in other ways would breach the confidence with which they had made

[30] F. No. CIC/AT/A/2006/00346, dated 20/10/2006.
[31] Section 8(1) (g), RTI Act, 2005.

their deposition and may even expose them to wholly avoidable risk (F.No. CIC/AT/A/2006/00346 at para 3)." It further held that source of information including witnesses should be protected and this is not in any way violative of the provisions of RTI Act. While upholding the non-disclosure of the names of witnesses and others in the report, the Commission provided a rider by observing that the conclusions of the report must be disclosed to the seeker of the information. Hence, it directed the respondents to communicate to the appellant the concluding part of the afore-mentioned enquiry report deleting, if necessary, names which may appear therein. The intent behind this is the security of life and person of those who come to assist the police in reaching to the conclusion and solving any crime. In order to sustain the faith and confidence of the witnesses and other deponents in the law and order enforcement machinery, it is necessary to protect the identities of the persons coming forward to help the police.

Despite the clear cut decisions with reference to disclosure of concluding parts of the enquiry reports, the police seem to continue with the culture of denial of information. The facts of *Mahabir Singh v. Shalini Singh, Deputy Commissioner of Police (Vigilance) & CPIO, Delhi Police, Asaf Ali Road, New Delhi*[32], will testify of the existence of the culture of denial of information in the functioning of Delhi Police. In this case, the appellant challenged the order of the PIO and AA for not providing the information as requested by him. The main request of the appellant was for the supply of the report of the enquiry officer with regard to his petitions dated 4/6/2004 and 28/6/2005 to the Joint Commissioner of Police. The appeal was allowed by the CIC on the basis of rationale given in other similar decided cases. It observed in this case that the enquiry reports in such matters should be disclosed to the seekers of information taking care to omit from the body of the reports the names and other particulars of witnesses and deponents, which will ensure that those assisting the Police authorities does not become vulnerable to harm and risk of their life and person.

Under the given facts of the case, the CIC directed the respondents to disclose to the appellant the enquiry report and the action taken on his petitions. It further added in its order that the names and other details of deponents and witnesses may be

[32] F. No. CIC/AT/A/2006/00462, dated 28/12/2006.

erased or removed from the report given to the appellant in order to save witnesses from unnecessary harm. The spirit of section 8(1) (g) demands that those who are coming for the help of police authorities should not be made vulnerable to the pulls and pressures. They have to be saved from the dangers incurred by deposing before the police.

The police in matters regarding the disclosure of information with regard to their staff often took the plea of privacy provisions contained in section 8(1)(j). In *Hema D'Souza v. Deputy Commissioner of Police (D.C.P.) Vigilance*[33], the Commission to a larger extent stated the law on the 'privacy issue' of exemption mentioned under section 8(1) (j). The facts of the case shows that appellant filed a RTI with the PIO to seek information in respect SI Mr. Ram Sidh Upadhya, SI Mr. Ram Chander Dahiya and A.C.P. Mr. M.S.Virdhi. The appellant requested to provide the details about how many complaints, regarding allegations of corruption, inaction, manipulation of investigations, harassment, abuse of official power and criminal misconduct and so on, have been lodged against the above-mentioned personnel of Delhi Police in their whole career. The appellant also requested to provide the brief details of each complaint, with dates and allegations levied against them, findings of the enquiry with regard to each complaint and action taken against or punishment given to them. He wanted the copies of the enquiry reports and a copy of the punishments given to them also. The appellant in his application requested the PIO to allow him to inspect and have the copies of 'all the relevant enquiry file(s), record of communications, in form of letters, facsimile, email, documents, reports, papers, material in electronic form or electronic records or any other records, pertaining to the complaint, statements, notations and enquiry'[34]with regards to queries mentioned above.

The PIO, Delhi Police refused the requested information on the pretext of exemptions from disclosure given in sections 8(1) (j) and 11(1). He observed in his order that the information requested has no relationship to any public activity and also it is related to the third party information[35]. The AA also rejected the appeal and hence

[33] Appeal No.CIC/WB/A/2007/00300, dated 26/3/2007.
[34] Facts of the case given in appeal no. Appeal No.CIC/WB/A/2007/00300, dated 26/3/2007.
[35] Cursory look to these two sub-clauses of sections 8 (1) (j) and 11 (1) may clarify the law. The provisions can be referred to in the Annexure I.

the appellant approached the CIC in second appeal for the redressal of the grievances against the PIO and AA of Delhi Police.

In the appeal before the Commission, the respondent took the plea of section 8 (1) (j) and section 11(1). Therefore, the matter for consideration for the CIC was to decide whether section 8 (1) (j) and section 11(1) would apply to deny the requested information.

The Commission, on perusing the records placed before it, found that the plea taken by the respondents that the information requested does not have any relation to public activity and therefore exempted from disclosure under section 8(1) (j) does not hold water as information sought regarding officers discharging public duties in all probability would be concerning to the public activity. Therefore, the information, related to the number of complaints, allegations of corruption, inaction, manipulation of investigations, harassment, abuse of official power, criminal misconduct and so on, those were lodged against the three officers in their whole tenure with Delhi Police, must be provided to the appellant.

On the other plea of privacy to deny information by the respondents under section 8(1)(g), the Commission examined the issue from the point of view of 'invasion of privacy' under section 8(1) (j). In this regard, the CIC observed that there is no clear definition of what is meant by 'invasion of privacy' within the meaning of RTI Act. The Commission was faced with the predicament in the absence of any law related to privacy in India and therefore, it sought the help and guidance of the laws on privacy existing in other countries. The Commission perused different foreign laws on the privacy issue and found laws related to the matter in consideration before the Commissions in UK and USA. The Commission observed that:

> We have no law in India equivalent to the US Restatement of the Law, Second, Torts, which defines the Intrusion to Privacy, as follows.
>
> One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person. (Appeal No.CIC/WB/A/2007/00300 dated 26/3/2007 at page 5).

It further observed in this case that:

We also have no equivalent of UK's Data Protection Act, 1998, Sec 2 of which, titled Sensitive Personal Data, reads as follows:

In this Act 'sensitive personal data' means personal data consisting of information as to: a) The racial or ethnic origin of the data subject; b) His political opinions; c) His religious beliefs or other beliefs of a similar nature; d) Whether he is a member of a Trade Union; e) His physical or mental health or condition; f) His sexual life; g) The commission or alleged commission by him of any offence; h) Any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings (Appeal No.CIC/WB/A/2007/00300 dated 26/3/2007 at page 5).

In the absence of any definite Indian law on the concept of 'invasion of privacy', the Commission took the above-mentioned UK and USA laws as reference points to define the 'concept of privacy'. In the light of the above-mentioned provisions contained in section 2 of the *United Kingdom Data Protection Act, 1998*, the CIC held that the information, sought by appellant like inspection and copies of the documents concerning the commission of any offence or the sentence in such proceedings against the three officials, would qualify to be the 'sensitive personal data' within the meaning of sub-sections (g) and (h) of the Act of 1998. Therefore, the information sought concerns the privacy of the three police officers and hence the disclosure of such information is barred by the exemption clause given in section 8(1) (j). Moreover, the information requested by the appellant also related to the third party and hence the consent of third party is essential before disclosing the information, which qualifies to be '*sensitive personal data*' within the meaning of section 2 of the *United Kingdom Data Protection Act, 1998.* Therefore, as per the requirements of section 2 of the *United Kingdom Data Protection Act, 1998* read with section 11(1) of the RTI Act, the disclosure would require the assent of all the three Delhi Police officials.

But the Commission finds no reason to withhold the enquiry reports, which should normally be in the public domain, unless the matter enquired into falls into any of the categories exempted from disclosure under section 8(1) or section 9 of the RTI Act, 2005.

The case of *R.K. Arya v. Deputy Commissioners Police (DCP), Economic Offences Wing (EOW)*[36] is significant because, in this case CIC was confronted with question that whether the residential address of police officer can be exempted from

[36] Appeal No. CIC/WB/A/2007/001610, dated 11/12/2007.

disclosure under the exemption clauses of section 8 (1). The case relates to two identical files numbering CIC/WB/A/2007/001547 and CIC/WB/A/2007/001610, which came before the CIC in appeal under section 19. Both these cases are identical except in that the information sought is with regard to two different police officers i.e. Inspector Mr. R.K. Gulia in File No. CIC/WB/A/2007/001547 and Sub Inspector Mr. Suresh Lakra in File No. CIC/WB/A/2007/001610. The information sought in both the cases is about disclosing the residential address of Mr. Suresh Lakra, Sub-Inspector (EOW) Crime, Delhi Police having office at Qutub Institutional Area, Mehrauli, New Delhi and Mr. R. K. Gulia, Inspector (EOW) Crime, Delhi Police, having office at Qutub Institutional Area, Mehrauli, New Delhi.

The appellant also wanted to have the copies of the Income Tax returns filed by both of them to Income Tax Department and to the EOW Crime, Delhi Police for the years 2002 to 2006, the details of properties, which have been furnished by both of them at the time of joining the service and the gross salary and carrying home salary of both these officials.

In both cases an identical response was given by the PIO, Delhi Police denying the information and documents requested by the appellant on the pretext of exemption under section 8 (1) (j). The appellant went in first appeal against the order of the PIO to the AA, which held that appellant had sought information, which is not connected to any 'public activity or interest'. The AA further observed that disclosure of the requested information would result in the invasion of privacy. It justified the orders of the PIO under section 8 (1) (j) of the RTI Act, 2005. The appellant felt aggrieved and hence approached CIC in second appeal. Before the Commission the appellant accused the PIO and AA of gross negligence for not providing him the requested information.

It was argued by the respondents before the CIC that these two officials are no more with the EOW, Crime of Delhi Police. They have been transferred to other departments. Since the case involves the third party, the Commission thought it fit to give the opportunity of being heard to Mr. R.K. Gulia and Mr. Suresh Lakra. During the course of arguments, Mr. Lakra contended before the Commission that he was the investigating officer of a case involving the appellant and that is why the appellant is

harassing his family and he apprehended danger to his life and family. Therefore, he argued that his residential address should not be disclosed to the appellant. He also cited CIC decision in file no. CIC/WB/A/2007/1547, where CIC held that, "...there can be an exception to this rule if the position held by the official concerned or the work he/ she is engaged is of so sensitive a nature that any such disclosure could lead to apprehension to the life or physical safety of the persons in which case it will merit exemption from disclosure of information." Mr. Lakra further contended that disclosure of personal address would also be the violation of his fundamental right guaranteed under Article 21 of the Constitution. The exemption sought by Mr. Lakra is with regard to his official position in Delhi Police. But evidence on records showed that the official position held by Mr. Lakra is not a 'classified position' in the official documents and rules governing the Delhi Police. Therefore the CIC in this case held that, "A conscious decision of this nature will have to be taken with regard to each such official failing which this exemption cannot be claimed in a general manner (file No. CIC/WB/A/2007/1547 at page 6)." It was observed by the CIC that such a 'conscious decision of this nature' has to be taken by the head of the department. The position held by Mr. Lakra is not classified by the Police department. Therefore, the Commission held that the official residential address is an integral part of the disclosure mandated for every public authority under section 4 (1) (b) (ix)[37]. Hence, the CIC directed the PIO to provide the requested information to the appellant within 10 days of the date of the decision.

The CIC further emphasized in this case, that some of the information is of such a nature that it must be *suo moto* notified as it is an obligation casts upon every public authority under section 4 (1)(b) (ix) and (x) of the RTI Act. It is the legal duty to disclose *suo moto* the information mentioned in section 4 of the Act, the police department has failed to do so and therefore if an applicant requests for such information, the Delhi Police cannot claim the invocation of non-disclosure clauses in section 8.

The case of *Ajay Kumar Goel v. B.S. Brar, Jt. Commissioner of Police & First Appellate Authority, Police Headquarters, I.P. Estate, New Delhi*[38], is interesting to

[37] Section 4 (1) (b) (ix) says, 'Every public authority shall-publish within one hundred and twenty days from the enactment of this Act-a directory of its officers and employees.'
[38] F.No. CIC/AT/A/2006/00051, dated 26/5/2006.

review as the Delhi Police played the game of words with the appellant and tried to deny the requested information. In this case, the second appeal under section 19 emerged out of the order of the AA dated 17/2/2006, where appellant was supplied with the information, which he did not seek. He asked for the information in a RTI application dated 17/11/2005 regarding the action taken against the police officers, who failed to take action on his petition dated 22/7/2004. This petition dated 22/7/2004 was for the removal of encroachment on the road in the Pandav Nagar area of New Delhi.

As it is clear from the facts of the case that in reality the information supplied by the PIO to the appellant was about the action taken regarding certain complaints made by the appellant but, what the appellant wanted, was the action taken against the police officers, who failed to take action on appellant's complaint dated 22/7/2004. During the arguments, the respondent agreed to supply the required information to the appellant and hence appeal was disposed off with the direction to the PIO to give the information as requested by the appellant in his RTI application dated 17/11/2005.

The above discussed case is a pointer to the fact that police is reluctant to share even the basic information. The police department seems to be in the habit of denying the common information, which should have been in the public domain for scrutiny by the common masses. The Delhi Police was compelled to part with the information requested by the appellant only on the intervention of CIC.

In *Ravinder Kumar v. Bhim Sain Bassi, Joint Commissioner of Police & AA, Southern Range, Police HQ, I.P. Estate, New Delhi*[39], the appellant filed a RTI application with PIO & DCP, West District, New Delhi to requested information in respect of one Gurbax Singh Bucchi accused in a case under FIR 370/05 and 456/05 in PS Kirti Nagar, New Delhi. The information requested by the appellant was turned down both by the PIO and the AA under exemption provisions of Section 8 of the RTI Act. The appellant, aggrieved by the order dated 14/1/2006 of AA, approached the CIC in second appeal. The PIO and AA contended before the Commission that both the cases i.e. 370/05 and 456/05 are under investigation or under prosecution. Therefore, the disclosure of information about these cases is barred under the

[39] F.No. CIC/AT/A/2006/00004, dated the 30/6/ 2006.

provisions of section 8 (1) (h) and section 8 (1) (g). After going through the facts of the case, the Commission held that the information requested cannot be disclosed as it is barred under the exemptions covered by section 8 (1) (h) and 8(1) (g). Both bar the disclosure of information, if it would impede the process of investigation or apprehension or prosecution of offenders and if the disclosure will identify the source of information or assistance given in confidence for law enforcement or security purposes[40].

In the view of the above circumstances, the appeal was dismissed with the reiteration that Commission has, time and again, held the view "that matters under investigation or those taken up in prosecution should not be disclosed till all proceedings in such cases are over (F.No. CIC/AT/A/2006/00004, dated the 30/6/2006 at page 2)." Hence, the Commission upheld the stand adhered to by the PIO and AA that disclosure is barred by the exemption clauses.

Again in *Nahar Singh v. Virender Singh, Deputy Commissioner of Police & PIO, North West District, Delhi Police, New Delhi & others*[41], the matter for consideration for the CIC was, whether Magisterial Report can be exempted from disclosure under the exemption clauses. The facts of the case go like this that the appellant approached the Central Information Commission in appeal against the order dated 26/9/2006 of the AA. The PIO had already denied giving any information to the appellant citing the bar on disclosure under section 8.

In this case, the appellant sought certain information with regard to know the basis or ground of his externment through notice no. 1964 under section 50 of the *Delhi Police Act, 1978*[42]. It was pleaded by the respondents before the Commission that all externment are 'magisterial proceedings' in which evidence is led before the Magistrate, which is assessed by him before he passes an order. The presiding officer may under his discretion perform all or a part of the proceedings *in camera*. The

[40] Refer to these provisions in Annexure I.
[41] F.No. CIC/AT/C/2006/00452, dated, 28/12/2006.
[42] Section 50(1), Delhi Police Act, 1978 provides, 'Before an order under section 46, section 47 or section 48 is made against any person, the Commissioner of Police shall by notice in writing inform him of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them.'

intention behind doing so is to protect the witnesses and the deponents, who may be at danger, if their identity is disclosed.

The respondent also claimed before the Commission that requested information is sought at a time when proceedings in the externment have just begun and they are far from conclusion. They further contended that any disclosure of information requested by the appellant may interfere with the magisterial proceedings. They also informed the Commission that the appellant was told to approach the concerned magistrate for seeking his permission to disclose the information.

During the course of arguments, it came to the notice of the Commission that, the 'basis of proceedings against the appellant' under section 50 of the *Delhi Police Act, 1978,* is a report submitted by a subordinate police officer to his superior. The Commission observed that the report should be made available to the person against whom it is made to enable him to prepare his defence. The CIC further observed that appellant has not yet been given the requested information and it should have been given to him as it is not exempted under the exemptions provided under section 8. The Commission further held that the 'report' is covered by right to information within the meaning of section 2 (f) and 2 (j) of the Act[43].

The Commission allowed the respondents to remove the names if any, of persons other than the appellant as it would minimise the possibility of harm, which may be caused due to disclosure to any witness or deponent. This will fulfil the requirement of Section 8(1) (g).The CIC disposed off the appeal by directing the PIO to provide the appellant the requested information.

The police have to be accountable for every activity or the function it discharges. Even the calls made to the PCR vans have to be kept in records so that it can be assessed by the citizens as part of their right to information. In *Harvinder Singh Bakshi v. A.C.P. (HQ), Southern Range*[44], the appellant filed a RTI application dated 27/6/2006 for seeking details about calls made from his mobile no. 9811669988 to control room of Delhi Police at 100 no. on 25/4/2006 between 7.30 a.m. and 10.30 am, while the appellant was moving within the jurisdiction of District South i.e. between

[43] Refer to section 2 of RTI Act annexed as Annexure I.
[44] Appeal No.CIC/WB/A/2007/00290 dated 9.3.2007.

Vayusenabad and Aaya Nagar Police Post. The appellant also wanted other details regarding complaints at 100 no. made from his mobile no. 9811669988. He preferred recorded or typed conversation for calls made from his mobile to 100 no.

The PIO, Delhi Police informed the appellant that a detailed enquiry was conducted through SHO of PS Mehrauli, which found no record of the calls made from mobile no. 9811669988 from 7.30 am to 10.30 am on 25/4/2006. The PIO also informed the appellant that instead of his call, a call was made at 9.11 am on 25/4/2006 from Sonu Pandey. Thereafter, a FIR no. 246/06 dated 25/4/2006 under section 323/341/509 IPC was registered against the appellant and subsequently the appellant was arrested. Not being satisfied with the response of the PIO, the appellant filed the first appeal before the AA.

The AA observed in its order that PIO had already communicated to him that no such call was received in PS Mehrauli on the given date and time either from his mobile phone or through PCR as per record of the police station. However, the PIO was directed by the AA to obtain fresh report or clarification from DCP/PCR on the appeal of the appellant and a fresh reply be given to the appellant at the earliest.

As per the orders of the AA, the fresh enquiry was conducted by DCP/PCR and accordingly the PIO informed the appellant on 20/10/2006 that the PCR received a call at 8.02 am on 25/4/2006 from the appellant's mobile and was forwarded to SHO of PS Sangam Vihar. Then it was transmitted to PS Ambedkar Nagar. On enquiry there, it was found that the matter is related to PS Mehrauli, so finally the call was forwarded *vide* DD No. 32-A, dated 25/4/2006 to it. The appellant aggrieved by the details provided by the PIO approached the CIC in second appeal as the appellant found the details in contradiction to the Hutch bill details. The appellant prayed before the CIC to set aside the order of the PIO dated 20/10/2006 and required information be provided as requested in the original application dated 27/6/2006, where recorded or typed information was requested.

In response to this second appeal, the respondent again reiterated the fact that only one call was made from the mobile of the appellant, which was forwarded to PS Sangam Vihar and later on transmitted to PS Ambedkar Nagar and finally to PS Mehrauli. The issue before the Commission for consideration was the contradiction

between the records of Hutch bill details and the information given by the DCP (South). Both sides maintained their positions and were not ready to bulge a bit from their stated stands. During the course of the proceedings, the PIO expressed the possibility of the destruction of the records of the calls as per the '*deweeding policy*' of the police department.

The Commission was of the view that if the call record in the mobile is showing call details, then it is sure that they were made from the mobile. On the other hand, there is a possibility of the destruction of unnecessary calls made to the PCR vans under '*the policy of deweeding*' by the police department. The Commission however, directed the Delhi Police to keep the records of the calls destroyed under the *'policy of deweeding'* as per the Government policy. The CIC further directed to re-verify the call details to reconcile the Hutch bill details.

The decision in *Harvinder Singh Bakshi case* assumes importance as it asked the Delhi Police to bring certain changes in the 'record keeping policy'. It will dramatically bring the systemic changes within the police department and it would certainly make police more transparent and accountable to the people. The mere saying that records were destroyed and hence not available for disclosure will not be a valid argument. Now, the Delhi Police has to keep the records of the unnecessary calls or the calls destroyed under *'the deweeding policy'* of the police department.

The question that whether the mother of the deceased is entitled to seek records from the public authority was settled in the case of *Laxmi Devi v. D.P. Verma, Dy. Commissioner of Police & CPIO, Delhi Traffic Police, R.K. Puram, New Delhi*[45]. In this case, the appellant is the mother of deceased Constable Anoop Singh. She filed the second appeal against the order of the PIO, Traffic Police dated 23/12/2006 and the order of AA dated 4/2/2007.

During the course of the hearing, the CIC noted that the appellant has a valid interest in the family pension and other terminal benefits of her deceased son, Constable Anoop Singh. The appellant was contesting a court case against the wife of the deceased son, who has now married some other person. On consideration of the facts of the case, the CIC held that the appellant is entitled to access files or

[45] F.No. CIC/AT/A/2006/00140, dated 13/7/ 2006.

documents connected with settlement of pension and terminal benefits of her deceased son. The appellant was also held entitled to have access to papers connected with public authority's interaction with the deceased wife. The Commission also directed the Delhi Police (Traffic Department) to allow her copies of the documents, she may choose on the payment of the requisite fee.

The *Laxmi Devi case* opened the avenues for all the persons to seek information regarding the pension or other benefits of their deceased family member. The public authority cannot deny this information.

The Commission is having an impact in the way the Delhi Police work. By using the penalty clauses given in section 20, the Commission can compel the police to adhere to the decisions and bring about a change for transparency and accountability so that no one feels aggrieved by the actions of Delhi Police. The *Surender Kaur v. Deputy Commissioner of Police (DCP) New Delhi District*[46], is such a case in point, where the Commission expressed its displeasure for not acting on the application for information transferred from other public authority under section 6(3). The facts of the case were that the complainant approached the CIC under section 18(1) (b) of the RTI Act, 2005, which provides that 'Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,- who has been refused access to any information requested under this Act.' The complainant first filed her application dated 5/7/2007 with the PIO, Tis Hazari Court, which transferred it to PIO, DCP office, New Delhi District under the provisions of 6(3) for finding it concerned with another public authority. The complainant was compelled to approach the Commission under the complaint provisions contained in section 18 of the Act of 2005, when response was not received from the PIO, Delhi Police. The Commission also sent a complaint notice dated 24/1/2009 but no comments were submitted to the CIC in response to its complaint notice.

Under these circumstances, the Commission admitted complainant's complaint under section 18(1) (b) and directed the PIO and DCP, New Delhi District to give the

[46] Complaint No. CIC/WB/C/2007/00552 dated 23/4/2009.

requested information within 15 days. It further issued show-cause notice to the PIO as to ask why a penalty of Rs.250 per day should not be imposed under section 20 (1)[47] for the refusal of the request for information. In another case filed by Surinder Kaur known as *Surender Kaur v. Anand Mohan, Deputy Commissioner of Police & CPIO, New Delhi District, Delhi Police, New Delhi & others*[48], she approached the CIC under section 19 as responses to the RTIs filed on 14/7/2007 and 8/9/2006 were not satisfactory. The CIC clubbed both of these appeals i.e. appeals no. CIC/AT/A/2006/00442 and CIC/AT/A/2006/00466 as the issues were identical. The appeals came up before the CIC against the order of the PIO dated 12/8/2006 and 29/9/2006.

Through her RTI applications she wanted to have information with regard to FIR no. 230/06, dated 25/4/2006. During the hearing of the appeals, it is claimed by the appellant that she also wanted the photocopies of the original documents from DSIIDC. But as admitted by the respondent, all these documents have been taken over by the police authorities for investigating the crime registered in the FIR no. 230/06. Hence, the PIO denied the information claiming the bar of section 8 (1) (h). The PIO was of the opinion that since the investigation is under progress, the disclosing of information could impede the investigation.

Though the third party (DSIIDC) is willing to share the information but appellant told that she wanted photocopies from the original files of the DSIIDC but they are in the police custody. The appellant did not want the photocopies from the photocopied files available with the DSIIDC. She wanted photocopies from the original files of DSIIDC, which are in the custody of the Delhi Police.

The Delhi Police informed the Commission that original files in question have been sent the Forensic Science Laboratory (FSL) for verifying the genuineness of the signatures on those documents. The PIO, Delhi Police told the CIC that this was done in pursuance of a case, which has been registered under FIR no. 230/06.

Keeping all these facts into consideration, the CIC held that the respondents are under no obligation to disclose the information as requested by the appellant as it

[47] Refer the section 20, RTI Act, 2005 annexed as Annexure I.
[48] Appeal No.CIC/AT/A/2006/00442 & Appeal No.CIC/AT/A/2006/00466 dated 29.12.2006.

is barred by the exemption provided by section 8 (1)(h). But, it further held that documents as requested by the appellant be provided to her, once the investigation is over. The third party i.e. the DSIIDC was also directed to provide to the appellant the copies of all such documents except those which had been handed over to Delhi Police.

The above discussed cases reveal that most of the time, the plea taken by the respondents i.e. Delhi Police is premised on the exemptions given under section 8 of the Act. Therefore, it is very necessary for the Courts and the Information Commissions to decide the scope and limit of these exemptions, otherwise the very purpose of bringing this piece of legislation would be defeated and frustrated.

SECTION 3: IMPLEMENTATION OF RTI BY DELHI POLICE

The Delhi Police in order to implement RTI Act has established offices in every district known as 'RTI Cell or District Information Cell (DIC)'. The Deputy Commissioner of Police, Vigilance Cell is made the Nodal Officer of all the RTI Cells of the Delhi Police. It has RTI Cells working in all the nine districts of Delhi. Besides this, it has also established RTI Cells for its branches like Economic Offences Wing, Special Staff and Crime Branch etc. In total the Delhi Police has 39 RTI Cells[49], presently in operation throughout Delhi to cater to the needs of the people.

As observed in the section 2 of this chapter, the police seem to hide information on the pretext of exemption clauses mentioned in provisions of section 8 and 11 of the RTI Act, 2005. But, the impact of Central Information Commission is visible in the functioning of the police department in Delhi. The system has become somewhat transparent and accountable with the advent of right to information regime as observed by the dealing clerk in the RTI Cell of the Delhi Police Head Quarters. The similar observations were made by the head constable and dealing officer in District Information Cell of New Delhi district situated at Parliament Street Police Station. She said that we have changed our way of working and responding to the RTI requests. Since, the Central Information Commission is very liberal in allowing the second appeal under section 19 and complaints under section 18; we also allow most of the applications. Otherwise, we would be receiving unnecessary flak from the CIC.

[49] See Annexure III.

She further observed that only those applications for request are turned downed, which are specifically covered by exemptions mentioned in sections 8 (1) (h), 8 (1) (g) and 11. These sections provide that information cannot be provided if it pertains to continuing investigation, privacy and third party.

The tendency to hide information, still finds lurking presence in the attitude and working of officers dealing, in the RTI Cells established by the Delhi Police in every district and for every branch of it. On being asked about the RTI requests' disposal within the time limit prescribed by the Act, the staff of the RTI Cell in PS Parliament Street observed that we tried our best to collect information within the prescribed limits, but due to certain reasons when it becomes not possible to give the information to the applicant in time, we give the required information in the appeal before the first appellate authority. This attitude somewhere defeats the intent of the Act to provide the applicant with the information within prescribed period of 30 days. The table given below will be of great help in throwing some lights on the trends in the response, attitude and implementation of the RTI Act in the Delhi Police.

Table 5.1: Information regarding filing of RTI & their response by Delhi Police from 2005-06 to 2008-09

year	Opening balance of Requests Received under RTI	No.of Requests Received during the year	Total no.of Requests (Column 3+4)	No.of Requests transferred to other PAs	Decisions where Applications for Information rejected	Number of cases where disciplinary action taken against any officer in respect of administration of RTI Act	No. of times various Provisions were invoked while Rejecting Requests Relevant Sections of RTI Act 2005												
							Section 8(1)									Other Sections			
							(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	9	11	24	(Others)
2005-06	0	1032	1032	NS*	321 (31.1%)	0	1	0	0	2	26	0	134	139	4	6	0	4	0	11
2006-07	1032	6001	7033	77	1019 (17%)	0	0	0	0	2	59	3	553	237	17	36	0	85	0	27
2007-08	7033	14549	21582	NS	1356 (9.3%)	0	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
2008-09	21582	18129	39711	NS	1304 (7.1%)	0	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS

*NS stands for Not Submitted in Annual Returns Reports by the Ministry of Home Affairs To CIC.

Tabulated by Research Scholar from primary survey and Annual Returns Reports submitted by Delhi Police to CIC

The table 5.1[50] shows that in the first year of the enforcement of the RTI Act, 1032 applications were received in all the RTI Cells during 2005-06. The small number of RTIs was received because the Act came into being in October, 2005 and the financial year closed in the month of March, 2006. So, the total of 1032

[50] Table 5.1 is a compilation of data collected by researcher from the field and the Annual Returns Reports filed by Ministry of Home Affairs, Govt. of India to Central Information Commission. For the years 2007-08 and 2008-09, data was collected from different PIOs of Delhi Police and for the year 2005-06 to 2006-07, it was obtained from the website of CIC, http://rtiar.nic.in/rtiar08/ARReportMenu.asp assessed on June 20, 2009.

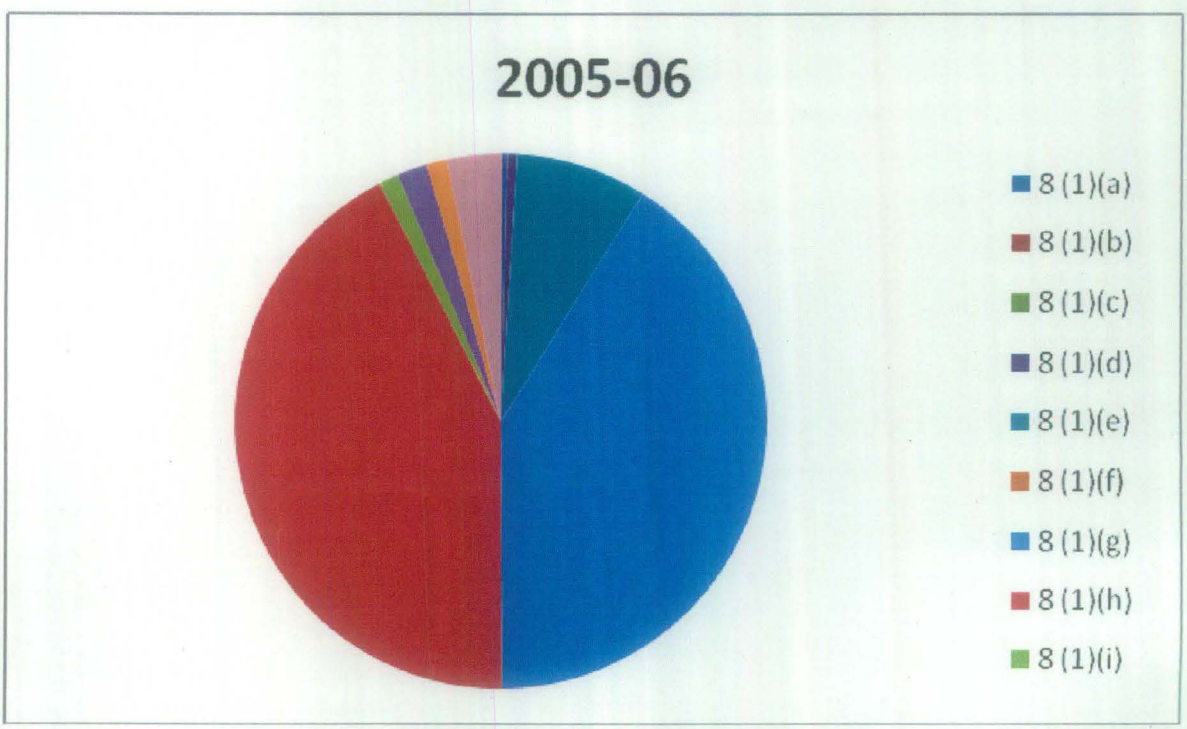
applications is for six months only running from October, 2005 to March, 2006. The astonishing part is that in the first year of implementation of the Act the total rejection of requests for information was 321, which constituted 31.1% of the total RTI applications received by the Delhi Police in the year 2005-06. The rejection could have been more, if the Act would have been imposed, say in the starting month of the year 2005. The rejection of 31.1% is only for six months. So, it is obvious from the data that in the first year of the arrival of information regime, it was not well received by the police establishment. The fig. 5.1 below also shows us that maximum rejections were done on the ground of exemption clause contained in section 8 (1) (h), which says that, "Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - information which would impede the process of investigation or apprehension or prosecution of offenders." In total of 321 rejections, 139 were done under section 8 (1) (h), which constituted about 43.3%. This makes it evidently clear that Delhi Police used this exemption clause to the maximum to deny the information. After this, 134 rejections out of the total of 321 were done under exemption clause section 8 (1) (g) of the RTI Act, which constituted about 41.7%. The exemption provided in this clause says, "Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,- 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." The third maximum used exemption in the year 2005-06 was of section 8 (1) (e), which provides that, "Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,- 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." The other provision under which 4 rejections were made was section 11, which says if the information pertains to third party, the assent of that third party is essential before parting with the information concerning the third party.

Table 5.2: Use of exemption clause for rejecting RTIs by Delhi Police during 2005-06 & 2006-07.

Exemption Clauses	2005-06 (in Nos.)	2005-06 (in %)	2006-07 (in Nos.)	2006-07 (in %)
8 (1)(a)	1	0.31	0	0.00
8 (1)(b)	0	0.00	0	0.00
8 (1)(c)	0	0.00	0	0.00
8 (1)(d)	2	0.61	2	0.20
8 (1)(e)	26	7.95	59	5.79
8 (1)(f)	0	0.00	3	0.29
8 (1)(g)	134	40.98	553	54.27
8 (1)(h)	139	42.51	237	23.26
8 (1)(i)	4	1.22	17	1.67
8 (1)(j)	6	1.83	36	3.53
9	0	0.00	0	0.00
11	4	1.22	85	8.34
24	0	0.00	0	0.00
Others	11	3.36	27	2.65
Total	**327**	**100.00**	**1019**	**100.00**

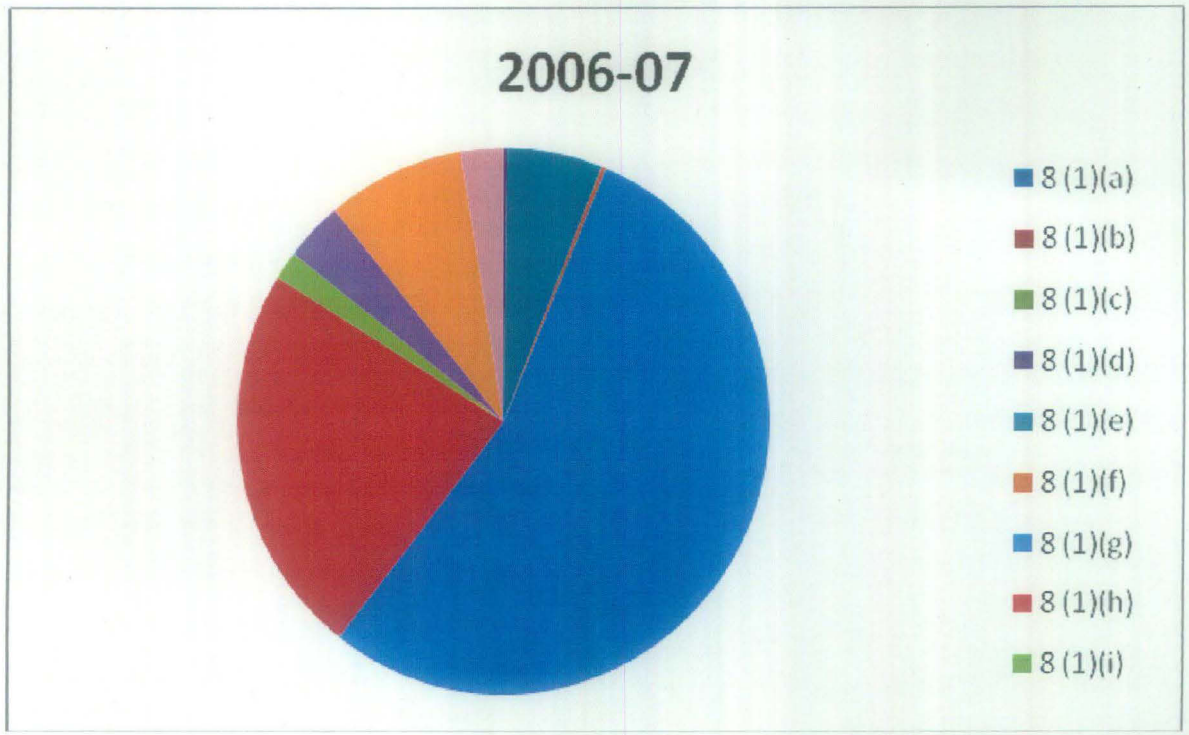
Source: Tabulated by the researcher from Table 5.1.

Fig. 5.1.a: Exemption clause-wise distribution of rejection of RTIs by Delhi police in 2005-06



Source: Compiled by the researcher from Table 5.1 to show the trend of use of exemptions clauses for the year 2005-06.

Fig. 5.1.b: Exemption clause-wise distribution of rejection of RTIs by Delhi police in 2006-07



Source: **Source**: Compiled by the researcher from Table 5.1 to show the trend of use of exemptions clauses for the year 2006-07.

It was also noticed in section 2 of this chapter, that the police maximum number of times took the plea of investigation under progress or the disclosure would impede the investigation or prosecution of the offender or the disclosure would endanger the life and security of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes[51].

In the year 2006-07, the Delhi Police saw a significant increase in the RTIs received, which went to 6001 from mere 1032 in 2005-06. There was an increase of 4969 applications in the year 2006-07 as compared to 2005-06, which was five times more than the applications received in the year 2005-06. The total of rejection in the year 2006-07 was 1019 i.e. 17% of the total applications received. The data of 2006-07 clearly shows one trend emerging that rate of rejection almost came down twice to 17% in 2006-07 from 31.1% in the year 2005-06. If we analyze the provisions under which rejection were made, it would be interesting to know that rejections under exemption clause 8 (1) (g) in 2006-07 doubled as compared to rejections under exemption clause 8 (1) (h) of the RTI Act in 2005-06. The rejections under exemption

[51] See section 8(1)(h) and 8(1)(g) of RTI Act.

clause 8 (1) (g) were 553 and under exemption clause 8 (1) (h) were 237. Looking at table 5.2 will instantly give us the fair idea that in the year 2005-06 the rejections under the clause (h) and (g) were almost same i.e. 139 and 134 respectively. The thing to be noted here is that rejections under section 11 rose to 85 in 2006-07 from mere 4 in 2005-06.

In 2007-08, the number applications received sky-rocketed to 14549 from 6001 in 2006-07. This may be attributed to the increasing awareness regarding right to information and the relief provided by the Central Information Commission. The impact of CIC was visible in the statement made by the lady constable dealing with the RTIs in the PS Parliament Street when she said that "CIC is very liberal in allowing the disclosure of information and therefore we allow the disclosure also without any hiccups."[52]

During the 2007-08 the total of 1356 RTI requests were turned down, which constituted about 9.3% of the total requests received in this year. The break-up of exemption- wise rejection is not available for the year 2007-08. The total of 18129 requests under RTI was received by the Delhi Police in the year 2008-09. Out of this, 1304 were rejected, which constituted about 7.1% of the total requests received during 2008-09. Again, the break-up of exemption-wise rejection was not submitted to the Central Information Commission. Under the provisions of the Act, it is incumbent on the ministries and the public authorities to furnish annual returns reports to CIC every year. But, this was not made available to CIC by Ministry of Home Affairs (MHA), Government of the India for the financial year 2008-09. The Ministry of Home Affairs has 33 public authorities and departments including Delhi Police under its control and supervision and out of 33, information of Central Translation Bureau Department of Official Language, MHA was provided to CIC by MHA in the year 2008-09 and 2009-10. Information regarding Delhi Police was also not submitted in the Annual Returns Report of 2008-09 and 2009-10. The list of departments and public authorities under the direct control of Ministry of Home Affairs is attached in the Annexure VII.

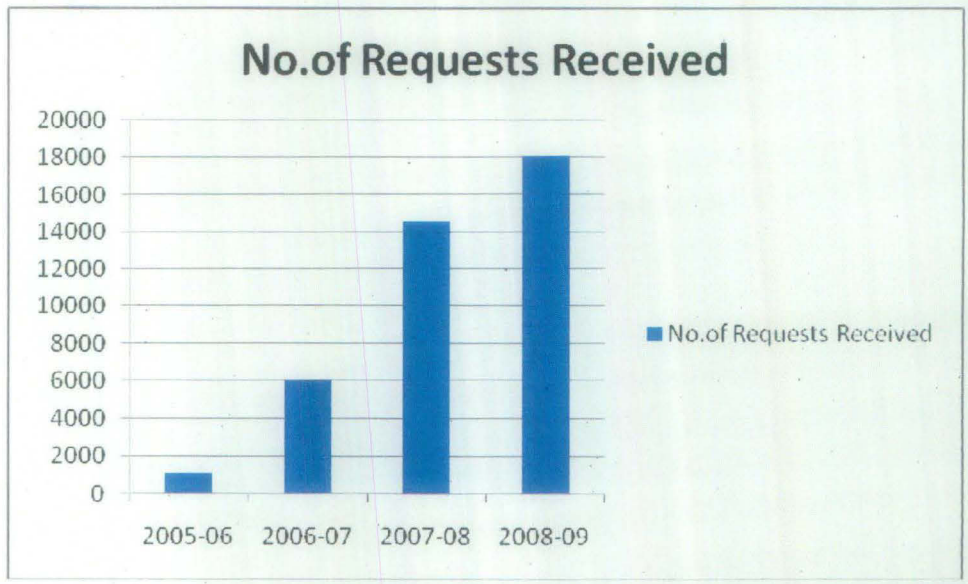
The data shown in the column for year 2008-09 in the table 5.1 has been obtained from the RTI Cell (Nodal Office) situated at Delhi Police Headquarters. This

[52] Statement given by lady constable of the Parliament Street District Information Cell, to the researcher while deliberating on the impact of CIC on the functioning of the police.

means that Delhi Police supplied the data for the year 2008-09, but Ministry of Home Affairs failed to supply it to the CIC, which it should have done according to the mandate of the Act.

The important trend, which is emerging out of the my survey and the analysis of fig. 5.2, which is given as under, is that as the time progressed, the people became more and more aware of the provisions and utility of the Act and hence the number of requests increased substantially every year.

Fig. 5.2: Total no. of RTI applications received by Delhi Police from 2005-06 to 2008-09.



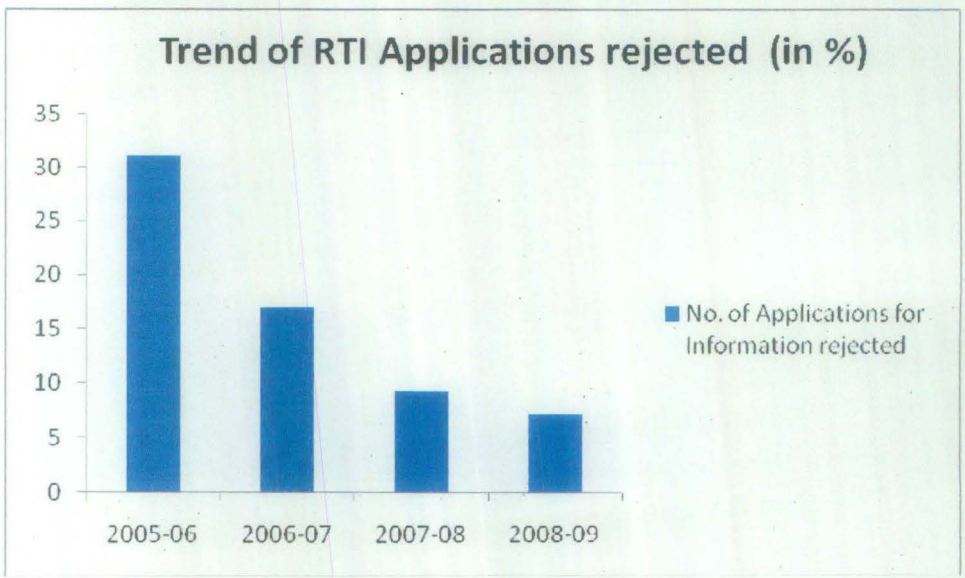
Source: Compiled by the researcher from Table 5.1 to show the frequency of RTIs received for the period of 2005-06 to 2008-09.

The bar graph shows it clearly that as the RTI Act, 2005 was new and people were less aware about its provisions, the number of RTIs received was less in the year 2005-06. Moreover, the data given in the column of 2005-06 in the table 5.1 was of six months only, therefore, the RTI applications received were small in number. But in the next year, there has been a significant increase. As is visible from the fig. 5.2, the number of RTIs received saw a great leap of about five times as that of year 2005-06. This even greatly increased in the year 2007-08. The main reason, which emerged out of the conversations from the police officers dealing with the applications in RTI Cells of Delhi, was the increase in awareness and the utility of the Act in getting information, which hitherto was denied on the basis of confidentiality and secrecy by the police establishment. The increase was also visible in the year 2008-09 but it was not too large to attract attention. The first two years saw huge increase as the people

were eager to use the provisions of the Act, but the maximum use of exemption clauses especially section 8(1) (g) and 8(1)(h) of the Act seems to dampen the spirit of the people (as in figs. 5.1.a and 5.1.b). The citizens mostly file RTIs to know the status of complaints, FIR, medical report, details of the calls made to PCR vans and information regarding police officials etc. The requested information can be withheld on the one or the other pretext of exemption clauses and discouraging the common masses to seek the route of filing RTIs.

Another significant trend, which emerged out from the data collected is that the number of rejection of requests for information has been gradually decreasing. The fig. 5.3 shows the decrease in percentage of the RTIs rejected from 2005-06 to 2008-09. The trend is quite visible from the under given bar graph.

Fig. 5.3: Rejections of RTIs by Delhi Police from 2005-06 to 2008-09



Source: Compiled by the researcher from Table 5.1 to show the trend of RTI applications rejection for the year 2005-06 to 2008-09.

The percentage of RTIs rejected in 2005-06 was 31.1%, which got reduced to almost half i.e. 17% in the year 2006-07. The decrease in percentage went to 9.3% in the year 2007-08. The rejection got reduced to mere 7.1% in the 2008-09.

The fig.5.4 indicates that Delhi Police's behavior towards implementation of the provisions of the RTI Act has been changing. In the starting of this legal entitlement of right to information in India, police in Delhi showed some reluctance to transparency and accountability and therefore, there was the rejection rate of 31.1% in

the starting year of 2005-06. But the increased role and interference of Central Information Commission through decisions under sections 18 and 19 as seen in section 2 of this chapter and the increased awareness in the people compelled Delhi Police to change the attitude with regard to right to information regime. As quoted earlier also, the lady constable in-charge of RTI Cell of New Delhi district accepted that Central Information Commission has made us change our way of functioning. This is because in the maximum of second appeals, CIC orders disclosure of information. Police officials dealing in the RTI Cells think it appropriate to disclose information rather than getting rebuked by the Commission by getting strictures, directions or penalty imposed for not disclosing the requested information.

The data collected during the course of survey and the conversations with the police officials reveal that some sense of responsibility towards the citizens has descended on the police. They start feeling uneasy as the time prescribes by the Act to give information draws nearer. This was disclosed by one of the Delhi Police officials working in the Central District RTI Cell in Daryaganj, Delhi.

As far as the staff members given the responsibility of the RTI Cells of Delhi Police are concerned the situation is not very good. The RTI Cells were lacking both competency and adequate number of personnel required to carry out the responsibility under the RTI Act. There were only 4 people except, Shri H.L. Meena, PIO and Shri Mohan Singh Baish, APIO, working in the RTI Cell situated at the Police Head Quarters, I.T.O., New Delhi. Similarly, 3 staff members were there in the Central District RTI Cell. The situation was not very different in the New Delhi District Information Cell, where about 5 staff members were manning the RTI cell. The South Delhi District RTI Cell was no different with 6 staff members managing the affairs of whole district. The staff members need to be increased, if really the Delhi Police is interested in effectuating the right to information and increasing its transparency and accountability in the day to day affairs.

As far as nature of information sought from the police is concerned, a large number of people request for status of complaints and FIRs[53]. The maximum requests

[53] Fact came to the fore while discussing with the officials of the RTI Cell of Delhi Police in various districts like south, central, New Delhi and Police Head Quarters etc.

for information are with regard to the Action Taken Report (ATR) of the FIRs or the complaints.

The staff of Delhi Police is also filing RTIs to know the details about the marks obtained in the promotional test conducted by the Delhi Police. The staffs also ask in their RTIs that how many marks they got in the examination etc. The applications from staff are also related to promotions, postings, pay-fixation and pension-grievances but the larger chunk is constituted by the requests related to arrears, promotions and departmental promotion examinations[54].

The RTI Cells of Delhi Police visited were not in good condition. One or two computer, few chairs and tables constitute the whole office. The record keeping process was not at all satisfactory. When asked to give the number of first appeals challenged as second appeal in CIC, not a single office was able to give the correct figures. Surmises and guesses dominate the conversation with them. The analysis of the decisions of the CIC in appeal shows that maximum appeals, which are coming to CIC are allowed by it and hence directing the Delhi Police to furnish the information requested. The constable in-charge of RTI Cell in New Delhi District informed that in 2009, six appeals against the order of the appellate authority went in second appeal and all the six were decided against the police department i.e. all the six were allowed by the CIC to disclose information sought by the appellant. As per the information given by Mr. A.S. Parmar, APIO of the South Delhi RTI Cell of Delhi Police, approximately fifteen first appeals from 2006 to 14 July, 2009 were challenged in CIC and out of this in about eight appeals directions were issued to disclose the information sought by the appellant[55]. The Central District RTI Cell of Delhi Police informed that only five cases till 17 July, 2009 were challenged in CIC as second appeal and all the five were rejected by the CIC. This means that in all these five cases information was rightly denied by the police under exemption clauses[56]. But the overall picture that emerged from the interaction with the official in-charges of RTI Cells is that, there is no proper record keeping of the appeals filed in CIC in any of the offices of the Delhi Police dealing in RTIs. The staff allocated to these cells is not

[54] This was evident, when the researcher had individual conversation with the staff of the various police stations in Delhi. The dealing clerk in the Delhi Police Head Quarters also testified this fact as he deals with most of the applications originating from the staff of Delhi Police.
[55] Information collected by the researcher during conversation with APIO, Shri A.S. Parmar.
[56] Information received by In-charge, RTI Cell, Central District, Daryaganj, Delhi.

adequate in number keeping in view the extent of the district and the number of people expected to approach these cells.

The Delhi Police as public authority under section 2(h) has fixed Rs. 10 as the fee of RTI application. This is in contrast to Delhi High Court, which first fixed Rs. 500 as the fee of one RTI application. This was later reduced to Rs. 50 by constant intervention by the CIC. Keeping huge fee for requesting information under the provisions of RTI in the long run defeats the very purpose of the law, which intends to increase the participation of the people in the governance of the country. The low fee would certainly provide a spur in the people to make Delhi police more accountable and make it believe in the participatory system of governance.

The Police staffs also admit to the fact that crystal clear transparency has arrived with the advent of Right to Information Act. They were of the opinion that this is a landmark legislation which opened the gates of governance that remained closed for the common masses since centuries[57].

CONCLUSION

Police as an institution remains in maximum contact with the people, dealing in all sorts of grievances of the masses. During this interface of police and citizens, there might be situations, where citizens want to know about certain issues. The police over the period of time develop the culture of secrecy. It continues to imbibe the colonial traits of hiding maximum things from the scrutiny of the citizens. It wants to function in secrecy but secrecy and confidentiality in general are ant-thesis to rule of law and hence anti-democratic. In democracy the participatory role of citizens in the functioning of government must be ensured. The right to information legislation is a step in that direction.

In the above sections of the chapter, we saw that police was reluctant to open up to the concept of transparency and accountability but with the increase in awareness about the right to information and the constant interventions by the Central Information Commission, there have been certain perforations in the secrecy maintained by the police hitherto. As seen in section 3 of this chapter the requests received are increasing and the rejections on the grounds of exemptions given

[57] Dealing clerk of South Delhi District RTI Cell made this comment on the condition of anonymity.

especially under sections 8 and 11 are decreasing. Though maximum number of applications received are denied on the basis of section 8(1) (g) and 8(1) (h), but the overall functioning of the police with RTI Act shows that police is shedding its reluctance to openness, which is the sole intent of the right to information legislation. The biggest catalyst in making the police to change its attitude towards transparency is the Central Information Commission, which has read the provisions of exemptions from disclosure very strictly and thereby denying the opportunity for the public authority to deny requested information. But there is still a long way to go before the actual fruits of RTI Act fructify. The government must direct Ministry of Home Affairs to submit its Annual Returns Reports every year so that reality comes to the fore against the euphoria created in relation to the implementation of the RTI Act.

There have been attempts from the police to somehow save their skin from the application of the RTI Act to them. In the National Convention organised by CIC from 13th -15th October, 2006, the Delhi Police claimed that it should be included in the Second Schedule to the Act to exempt it from the purview of the Act[58]. The argument given for including Delhi Police in the Second Schedule to the Act is that police in Delhi is flooded with requests from lawyers and the media, which may impede investigations and affect the law and order. The Delhi Police wishes to be included in the Second Schedule as exempted organisation. The Second Schedule contains some organisations like Border Security Force, Central Economic Intelligence Bureau, Narcotics Control Bureau, Central Reserve Police Force and Central Industrial Security Force etc. If placed in the Second Schedule, the Delhi Police will be exempted from the provisions of the Act and no one can ask it to disclose information concerning FIRs, promotions, postings and recruitment etc. The reason advanced in support of this is that it faces difficulty in performing its basic functions in the wake of receipt of lot of RTI applications from lawyers, media and the general masses. But these excuses cannot hold water in the circumstances, where participation in the democracy is accepted as the basic principle and the disclosure of information is the rule while secrecy is the exception. Every institution engaged in doing public duty must face the scrutiny of the people and Delhi police is no exception to this rule.

[58] Outcome and Recommendations of the National Convention on 'One Year of RTI organised by CIC in 2006.

CHAPTER VI

CHAPTER VI

CONCLUSION

We know that the adherence to international treaties and conventions is the duty of every nation. There is a deep recognition at international level for transparency and accountability in the affairs and decision making of a country. UN initiatives in the form of Declarations and Conventions initiated the dialogue on the need for transparent and accountable governments. The 'right to know' or the 'right to information' is the direct corollary of transparency and accountability. Internationally the right to information movement is gaining momentum and social activists are forming global alliances to demand more transparency in the functioning of the governments.

The Indian State responded to the call of the international institutions like UN by bringing in the legislation on the right to information to legally permit the citizens, the accessibility of information, which was hitherto remained hidden in government offices. The colonial trait of secrecy in administration, *red-tapism*, the absence of political will and indifferent attitude of higher judiciary to put in place the information regime are the main causes for the slow growth and acceptability of the right to information. The easy accessibility to information bridges the wide gulf of lack of faith and feeling of alienation between administration and citizens. This reduced gap ensures the greater participation of the people in the decision making processes of the government.

In India, the social activism in relation to right to information, which started in the 1990s especially in Rajasthan by MKSS, culminated in the '*Right to Information Act, 2005*', which is truly a path breaking legislation in the sense that it empowered citizens and ensured their role in the participatory governance. It allows access to governmental files and decisions. The right to information by ensuring participatory governance has an impact on policy formulations and programme implementation. This piece of legislation is significant as it has provisions, which mandate that public authorities must disclose maximum pro-active information. The Indian law on access to information contains some "radical provisions not found in similar laws even of other advanced democracies of long standing across the world. A citizen is not

required to establish his or her *locus standi* or give reasons for seeking information."[1] The success of this landmark legislation depends upon the Supreme Court and Central Information Commission as these institutions will provide life to the otherwise dead provisions of the law by interpreting its various provisions.

The struggles and initiatives to further make this law more progressive and people-oriented are not over. The informed citizenry of this country has a duty to see to it that institutions created under the Act to interpret the provisions are discharging their obligation properly or not. This is utmost essential as the "key to utilizing the immense potential of the legislation lies in creating the institutions envisaged by the law."[2] The institutions like CIC have a greater responsibility to discharge in this regard. Its efficiency will pave the way for the further success of right to information in India.

The law to be effective needs the change in behaviour of the stake-holders. The citizens have to show maturity while requesting information and the government servants must feel obliged to part with the information. The abuse of law from either side will defeat the very purpose of the enactment. This study points to one important aspect that government officials are reluctant to change and they prefer to continue the colonial legacy of keeping everything under the garb. The visible result is that appeals and complaints are piling up in the CIC.

This study was undertaken to gauge the impact of CIC on judiciary and police in Delhi. The study shows that there has been perceptible change in the functioning of both of these institutions as in a number of cases, as seen in chapter IV and V, the CIC with constant interventions compelled them to respond to the right to information regime. Though the judiciary is still reluctant to divulge information but the data from the field and the analysis of the decisions show that CIC has been able to make some in-roads in the domain of the functioning of judiciary. Similarly, in the initial years, the police in Delhi was not able to relate to the new environment for transparency and accountability but with the CIC allowing more appeals against police opens up a vast chunk of information, which in not too distant past, was confined to the exclusive possession of the police. The CIC allows not only the copies of FIRs, enquiry reports,

[1] Habibullah, Wajahat (2007), 'Analysis of Judgments of the Central Information Commission on the Right to Information Act, 2005', Foreword to PRIA Report October, 2007, p. 2.
[2] Das, Kamaljit (2006), 'Right to Information Act', *Orissa Review*, Feb-March, 2006, p. 45.

but the statements of complainants and the details of the calls made to the PCR etc., which the police was not ready to share before the advent of right to information.

The findings of the study point out that attitude of higher judiciary as seen in the chapter IV was not encouraging in the initial years. Both Supreme Court and Delhi High Court refused to share information, when they were asked to be accountable for their actions. The study also shows that rules were framed by the higher judiciary in such a way which could discourage citizens from filling RTIs.[3] However the field work, the collection of primary data and the analysis of the decisions delivered by CIC show that due to the impact of the CIC, the higher judiciary was pursuaded to bring certain changes in their attitude and the responsiveness to the right to information. The Delhi High Court revised its *Delhi High Court (Right to Information) Rules, 2006,* when CIC recommended to it under the provisions of section 25(5) of the Act[4] to bring these rules in conformity to the provisions of the RTI Act. As already stated in chapter IV the PIO, Supreme Court refused to share the basic information of how much RTIs were filed and how many were challenged as second appeal in the CIC till 13 July, 2009. The primary data collected from various RTI offices of courts indicates that there has been an increase in the awareness level. The requests for information have increased over the years. The field study also points to the fact that sub-ordinate courts are more responsive to the right to information as compared to higher judiciary. Through field work and analysis of decisions of CIC with regard to judiciary in Delhi, it is clear that even basic information is not shared by higher judiciary while the lower judiciary offers less resistance to the implementation of RTI Act. In lower judiciary the impact of CIC was more visible and the persons manning the RTI affairs in Tis Hazari Courts, the nodal office for all the sub-ordinate courts in Delhi, also accept this fact. Except one decision of the CIC, the lower judiciary did not take recourse to filing appeal against the CIC decision in Delhi High Court. Only in *N. Venkatesan case,* where CIC allowed an appeal for certified copies of the judgments. The lower judiciary finding it objectionable approached the Delhi High Court, which stayed the decision. Similar was the attitude of the High Court, when Supreme Court challenged

[3] See Rules 4 and 5 of the Delhi High Court (Right to Information) Rules, 2006 in the Annexure II.

[4] Section 25(5), RTI Act, 2005, says, 'If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.'

the decision of the CIC, which held that judges of apex court are bound to disclose their assets in response to a RTI application. The High Court stayed this decision of the CIC also. It further points out to the fact that higher judiciary is less receptive to the concept of openness and this response according to Shailesh Gandhi[5], Central Information Commissioner, would frustrate the purpose of RTI, Act.

The decisions of CIC reviewed in the chapter IV also points to the fact that Delhi High Court stayed the decisions of CIC allowing disclosure of information and hence a popular view is that it is indifferent towards the right to information regime. The study also shows that CIC has been able to persuade the lower and higher judiciary to change its practices, which were not in conformity with the provisions of the Act. The CIC's recommendation to Delhi High Court for bringing some changes in the *Delhi High Court (Right to Information) Rules*[6] was complied by it and these rules as desired by the CIC were amended on the recommendation of a Committee of Judges appointed by the Chief Justice of Delhi High Court. The case in point is about rules 4 and 5, which prescribe fee for RTI application and that the decision of the court would be final in matters of examination conducted by the Delhi High Court. This was done on constant interventions on the part of CIC through various decisions. The interventions bore fruits and the rules were amended to suit the provisions of the Act.

The study indicates that responsiveness of the judiciary to right to information regime has increased due to the constant interventions of the CIC. But still there is a long way to go as far as implementation of the RTI in the judiciary is concerned. The comments made by Shailesh Gandhi, further corroborates the findings of the study when he says that:

> The judiciary has been granting stays on the orders of the information watchdog to provide information under the RTI Act, this will eventually kill it...[D]elay in courts in finally deciding such matters will destroy the RTI Act...[C]ommon man has already given up hope of getting justice from courts. Now if they continue to deny information by granting stays, I am sorry but slow poison is being administered to the right to know.[7]

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[5] Gandhi, Shailesh (2009), 'Judiciary, Government killing RTI Act', *The Hindustan Times*, July 24, 2009.
[6] See Annexure II for these rules.
[7] *Ibid.* 5.

Judiciary has a specific problem in dealing with the right to information and this is the question for the future research as how to make judiciary more receptive to the right to information regime and how to sustain the faith and confidence of the people in it. Justice J S Verma on the issue of declaration of assets is of the view that there cannot be two standards with regard to transparency and accountability. However the response with regard to disclosure of assets points to the contrary. The Supreme Court challenged the decision of CIC, which asked that it must disclose the assets of its judges. The Delhi High Court stayed this decision. In judiciary there are instances of not providing with the information in the name of independence of judiciary. Independence means freedom from the pulls and pressures of other organs of the government but it never ever means freedom from responsibility. The freedom to be independent loses its essence when we fail to realize the obligations. The question is whether the judiciary owes a duty to the people to come out clean and responsible in every aspect, be it the assets declaration or the declaration of other information held in the precincts of judiciary?

The analysis of decisions delivered by Central Information Commission and the field work show that still judiciary has not been very receptive to the right to information. It is quite intriguing that the PIO of Supreme Court refused to share information on basic issues but the PIO, District and Sessions Judge, Tis Hazari was cooperative enough in comparison to that of the Supreme Court and Delhi High Court PIOs. Though, the CIC tried its best to make judiciary compliant, but still there is lot to be done by CIC and the government to bring the judiciary under the scanner of RTI Act. The CIC through its interventions and recommendations under section 25(5) is doing its share of duties but the government's intention seems to be contrary. Instead of making the office of the Chief Justice of India amenable under the right to information law to end the controversy between Supreme Court and the CIC, the Union cabinet approved a proposal to enact a law for the declaration of assets by judges to the Chief Justice of India, in case of Supreme Court and to the Chief Justice in case of respective High Court. This is not in consonance with the equality provisions of the Constitution contained in Article 14. The attempt to bring in a law to make it mandatory for the judges to declare their assets is a start towards accountability and it remains to be seen how the spirit behind RTI infuses all levels of

the judicial hierarchy. Although, there already exists an in-house procedure adopted by the judiciary in 1997, where judges of the Supreme Court were asked to disclose their assets to the Chief Justice of India every year. However this is limited in enhancing the image of the judiciary as an accountable public institution because in a democracy those at responsible positions must open them up to the scrutiny of the people. Many believe that the proposed law would only give legal sanctity to the self-adopted resolution of the judiciary to declare the assets. This proposed law suffers from democratic deficit. This view is shared by Judges such as Justice J.S Verma whom I quote below:

> You want to maintain confidentiality only if you are hiding something...[i]t was Supreme Court judges who made it mandatory for candidates contesting elections to declare their assets. Then why should they not do the same themselves.[8]

This shows that judiciary was able to convince the government to exempt the judges from disclosing their assets and putting them into the public domain. All this development corroborates the findings of the study that judiciary has not opened up substantially to the public scanner.

The study also evaluated the impact of Central Information Commission on police in Delhi. The comparative analysis of the data of the Delhi Police showing its response to the RTI indicates that in the initial year, since the level of awareness regarding the provisions of RTI Act was minimal, the number of requests for information was meager. But with the passage of time, the increase in awareness marks the increase in the number of the requests received for information. The analysis of decisions of CIC with regard to Delhi Police also points to the fact that there was an increasing trend towards disclosure of information by the Delhi Police. The table 5.1 and the graphs tabulated from the table indicate that over the years the number of rejections of RTI applications came gradually down from 31.1% in the initial year i.e. 2005-06 to 7.1% in the year 2008-09. The field work also shows that the number of requests for information increased significantly in the year 2006-07, which kept on increasing. The increase in number of requests for information and the reduction in the number of request rejected point to the fact that the police have been

[8] Comments made after the cabinet approves the proposal of a law for the judiciary to declare their assets to the Chief Justice, *The Hindustan Times*, July 25, 2009, New Delhi. In 2002, it was Supreme Court in the case of *Union of India v. Association for Democratic Reform*, AIR 2002 SC 2112 that held that a person is having the right to know the assets of candidate contesting the election.

somewhat responsive to the call of information regime. The study also shows that police used exemption clauses (g) and (h) of section 8 of the Act to the maximum. In the year 2005-06, of total rejections, 43% applications for information were rejected under clause (h) and 41% under clause (g). These two clauses exempt the disclosure of information, if it can impede the process of investigation or apprehension or prosecution of offenders and if the disclosure 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.[9]

The other fact, which the study brings to the fore, is that neither judiciary nor the police has fulfill the requirement of pro-active disclosure of information, which is the legal requirement to be discharged by every public authority under section 4 of the Act. The website of Supreme Court, Delhi High Court and Sub-ordinate courts in Delhi, except the particulars of the PIO appointed, have not come out with other particulars, which have to be *suo moto* declared by them. Similar is the situation with Delhi Police. Its website shows the manuals concerning the RTI but if one visits them, only list of designated PIOs, APIOs Appellate Authorities, addresses and their contact numbers are available.

The study further points out that the record keeping practices were in shambles in both the judiciary and the Delhi Police. In lower courts, there are no court-wise breaks of RTI requests records. The PIO, District and Sessions Judge, Tis Hazari, which is also the nodal office dealing with RTIs from all the sub-ordinate courts in Delhi, could not give the exact number of appeals challenged in the CIC and how many decided against them. Similar was the situation in District RTI Cells of Delhi Police, where records keeping was in shambles too. Not a single PIO of any District RTI Cell was able to give the correct data of how many first appeals were challenged in the CIC and how many were allowed by it. The data collected from field work also indicates that within the four years of the implementation of the right to information regime the proper infrastructure is not provided to the RTI offices in judiciary as well as Delhi Police. As seen in chapter V, the number of staff manning the whole process of responding to RTI requests was not adequate according to the needs. In every office, staffs ranging from 2 to 4, except the PIO and APIO were deployed to handle

[9] See section 8 in Annexure I.

the load of RTI applications. This shows that there is still a lot to be done to make judiciary and Delhi Police transparent and accountable.

The study shows that the Central Information Commission has been able to impact the practices and responses of the judiciary and police in Delhi to a large extent. There is a lurking fear of CIC in the minds of the staff dealing with the RTI applications both in judiciary and police. As per the statements quoted in chapters IV and V of the staffs dealing in RTIs, the impact is quite visible but there is huge possibility and potential with CIC to further continue its efforts to make these two institutions more accountable and responsive.

The gist of the study is that the Central Information Commission has performed its legal obligation of bringing judiciary and police under the scanner of RTI Act, 2005, but still a lot of potential exists in CIC to further convince and compel these two institutions to abide by the intent and spirit of the law on access to information. There is perceptible change visible in the functioning of both judiciary and police in Delhi but more efforts on the part of CIC are required to maintain the momentum for a change in attitude and responsiveness of these institutions. The right to information has made some in-roads in both of these institutions and the veil of secrecy is being lifted gradually with the constant interventions of the CIC as the apex body to implement the right to information.

At last, some suggestions to improve the working of the Central Information Commission and making RTI Act more effective. In order to improve the efficiency of the CIC, the following things if done, would certainly result in the increased efficiency of CIC as an apex institution to implement the right to information:

- RTI Act may be amended to give unified structure to the CIC. Instead of every public authority having its own staff manning the RTI offices, the CIC must have a unified structure like Central Election Commission. This would reduce the bias of the public authorities as the PIOs would be appointed by the CIC and hence eliminating influences from the officers of the concerned public authority.

- The Central Information Commission is a quasi-judicial body. Therefore, it should have people with legal knowledge. The Court masters and persons with law background must be assigned responsibilities in the Commission. This would surely increase the efficiency of the Commission.

- It is because of its quasi-judicial nature, CIC's autonomy must be the first priority in order to ensure its smooth functioning. The foremost thing to ensure autonomy of any institution is to make it financially autonomous and hence, funds meant for CIC instead of being allocated to Department of Personnel and Training (DoPT), should directly be charged on the Consolidated Fund of India. The Parliament can also make a direct grant to the Commission.[10]

- The CIC must be provided with the powers to make the public authorities execute its decisions. Though the powers of civil court is entrusted to the Commission but the Right to Information Act, 2005 still lacks the provisions for empowering the CIC to force the public authorities to comply with its decisions.

- The RTI Act also lacks the provisions for contempt proceeding for non-compliance of the directions of the CIC. It should be provided with the powers to issue contempt notice, which will surely increase the compliance rate of its decisions.

- The Second Administrative Reforms Commission (ARC) in its first report on right to information recommended a road-map for effective implementation of the Right to Information in the judiciary and legislature.[11] The amendment in the RTI Act must be made to specifically say that the office of CJI is covered by the right to information. This amendment to the Act would bring the controversy between Supreme Court and CIC to end.

- The Second ARC recommended in its first report submitted to the Government of India to change the composition of the selection committee for the appointment of Information Commissioners. It made the recommendation that

[10] Resolutions passed at the National Convention organised by Central Information Commission in Vigyan Bhawan, New Delhi, held from October 13-15, 2006.
[11] ARC recommended this in the first report titled as 'Right to Information, Master Key to Good Governance' submitted to the GOI in June, 2006.

cabinet minister be replaced by the CJI at Central level and CJ of High Court at the level of States. This would make the appointments unbiased and merit based.

- The Act should be suitably amended to realize the penalty from the defaulter and to make the public authorities to comply with the recommendation for disciplinary action under Section 20(2).[12]

- The CIC must also have powers to recruit its own staff. This will reduce the dependency of the Commission on the DoPT for deputing the staff.

- The data of the public authorities, which have complied with the pro-active disclosure provisions contained in section 4(1) (b) and Section 5(1) & (2) of the RTI Act[13] be loaded on their web-sites for online dissemination of information. In addition to this, every public authority must show the details of contacts of its PIOs, APIOs and AAs on the website.

- A need is felt of nodal officer appointed by the Commission to monitor the implementation of the RTI Act. Most of the public authorities have not come up with the requirements of *suo-motu* disclosure of information. This monitoring authority will keep tab over the implementation aspect.

- The e-governance projects of Government of India and State Governments must be integrated with RTI by computerizing all government records. This will help citizens in getting the information through the email.

- It is generally seen that junior level officers have been appointed as PIOs in public authorities. This compromises the purpose of bringing transparency in the system. Therefore, there should be directions from the CIC to all public authorities regarding the level of seniority in post required to qualify as the PIO.

- RTI Act must be amended to make it applicable to all companies and organizations in corporate sectors. Other private organizations, which deal with public, should also be made accountable under the law.

[12] See section 20(2) in the Annexure I.
[13] See the provisions of sections 4 and 5 in the Annexure I.

- The Government of India must create awareness and for this adequate budgetary allocation must be made for conducting seminars, symposiums and workshops. The CIC must also ensure that training programs are conducted for the PIOs and AAs.

- The '*Jankari Call Centre*'[14] established for the first time in Bihar for receiving RTIs on the phone is an important development in the right to information movement. This innovative idea should be replicated at Central and state level also.

- There should be penalties imposed on the defaulting PIOs, APIOs and AAs for not complying with the provisions of the Act.

- The recommendation of the Second Administrative Reforms Commission on the scrapping of the *Official Secrets Act, 1923* should be accepted by the Government of India in order to make the system more transparent and accountable.[15]

- The ARC also recommended that at least half the members of CIC should be from the non-civil services background. The acceptance of this recommendation will do well for the implementation of the Act, as the bureaucrats are trained in the culture of secrecy and throughout their career they develop the habit of hiding information from the public scrutiny.

- Section 28 the RTI, Act empowers competent authorities mentioned in section 2 (e) to make their own rules to implement the provisions of the Act. This sometimes creates problems as rules of one public authority contradict the rules of the other. For, instance the fee prescribed earlier by Delhi High Court was Rs. 500[16] and in other public authorities it was Rs. 10. So in order to reduce contradictions, it is necessary that uniform rules are formulated, which are applicable to all public authorities.

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[14] The 'Jankari Call Centres' were established on January 29, 2007 in Bihar. The call centre records the voices of the citizens over phone and then it is put on the piece of paper to be presented before the concerned PIO. A sum of Rs 10 as fees of the RTI is automatically charged in the callers' telephone bill.

[15] ARC recommended this in the first report titled as 'Right to Information, Master Key to Good Governance' submitted to the GOI in June, 2006.

[16] This has now been reduced to Rs. 50 after the CIC intervention.

- In India there are no laws on privacy like *UK Data Protection Act, 1998* and the *US Law of Torts on Privacy*. There is an urgency to enact these laws so that rights and liberties of individuals can be safeguarded. These laws on privacy and right to information have to be harmonized.[17]

The above mentioned recommendation can only be implemented if the civil society maintains its constant pressure on the government. There is no denying the fact that government machinery will always be reluctant to the maturing of right to information regime. The hiding of information from the public scrutiny has always been the intent of the government. The right to information law is a tool, which if appropriately used would culminate in the empowerment of the people. Roy sums it up rightly:

> If government is a collective entity in the modern democratic era, transparency makes it distinct from the rule of yore. The gains of democracy cannot be complete without access to information. Deprivation stems from opaque laws, norms and practices, dispossessing people of their rights. Transparency opens the doors to progress and empowers people on a just basis. Societies that compromise the freedom to know limit the choice of their people and cripple their right to decide.[18]

The law to provide information is a positive measure but political will is lacking at all levels to bring in the information regime. Still structures mandated by the RTI Act, 2005 are not in place in many of the government departments. This applies equally to the CIC also, though it has pro-actively disclosed much information on the internet about its functioning. Till now, many requirements of the law have not been translated into concrete steps to strengthen the basic structure of RTI.

There is still lack of awareness among the people about RTI. To encourage the use of it, more and more civil society organizations must come forward to spread and strengthen the RTI regime. The government in order to hide information tries to make amendments in the Act to dilute some of its provisions. An attempt was made by the central government to exclude file-notings from the scope of RTI Act, which could not succeed under the pressure exerted by the civil society. It is the foremost duty of every citizen to safeguard the law, against any attempt by the government to dilute the provisions of the Act. The RTI Act stands for transparency and accountability and

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[17] Habibullah, Wajahat recommended this in the 3rd Annual Convention on 'RTI and its Ramifications for Good Governance', November 3-4, 2008.

[18] Roy,Aruna, *et al* (2007), 'The Right to Transparent Governance', Combat law, March- April, 2007, p. 27.

hence democratising the processes and structures of governance. No doubt, the RTI regime is in a nascent stage and it will take time to mature but efforts to make it stronger should continue at war footings. As of now, CIC and judiciary are busy in giving interpretation to various provisions of the Act. So, the clear cut position with regard to the success of RTI Act would be visible in the coming years. Let us hope for the best. Let us hope for the victory of right to information over secrecy. Let us hope for transparent and accountable India, where institutions and structures of governance are responsive to the needs of the people. Let us hope for an India, where sharing of information is a rule and secrecy the exception.

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ANNEXURE

ANNEXURE: I

THE RIGHT TO INFORMATION ACT, 2005

No. 22 of 2005

[15th June, 2005]

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I
Preliminary

1 (1) This Act may be called the Right to Information Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) The provisions of sub-section (*1*) of section 4, sub-sections (*1*) and (*2*) of section 5, sections 12, 13, 15,16, 24 , 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.

2 In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—

(i) by the Central Government or the Union territory administration, the Central Government;

(ii) by the State Government, the State Government;

(b) "Central Information Commission" means the Central Information Commission constituted under sub-section (*1*) of section 12;

(c) "Central Public Information Officer" means the Central Public Information Officer designated under sub-section (*1*) and includes a Central Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;

(d) "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (*3*) of section 12;

(e) "competent authority" means—

(i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;

(ii) the Chief Justice of India in the case of the Supreme Court;

(iii) the Chief Justice of the High Court in the case of a High Court;

(iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;

(v) the administrator appointed under article 239 of the Constitution;

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, 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 other law for the time being in force;

(g) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

(h) "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 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, directly or indirectly by funds provided by the appropriate Government;

(i) "record" includes—

(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 (whether enlarged or not); and

(d) any other material produced by a computer or any other device;

(j) "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 the right to—

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) 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;

(k) "State Information Commission" means the State Information Commission constituted under sub-section (*1*) of section 15;

(l) "State Chief Information Commissioner" and "State Information Commissioner" mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (*3*) of section 15;

(m) "State Public Information Officer" means the State Public Information Officer designated under sub-section (*1*) and includes a State Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;

(n) "third party" means a person other than the citizen making a request for information and includes a public authority.

CHAPTER II
Right to information and obligations of public authorities

3 Subject to the provisions of this Act, all citizens shall have the right to information.

4 (1) Every public authority shall—

(a) 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 connected through a network all over the country on different systems so that access to such records is facilitated;

(b) publish within one hundred and twenty days from the enactment of this Act,—

(i) the particulars of its organisation, functions and duties;

(ii) the powers and duties of its officers and employees;

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

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

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

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

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for 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 agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

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

(xiv) details in respect 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 of the Public Information Officers;

(xvii) such other information as may be prescribed and thereafter update these publications every year;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

5 (1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(2) 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.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

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 the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,

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 State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) 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 may be necessary for contacting him.

(3) 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 connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as 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 practicable but in no case later than five days from the date of receipt of the application.

7 (1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,—

(i) the reasons for such rejection;

(ii) the period within which an appeal against such rejection may be preferred; and

(iii) the particulars of the appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

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

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

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

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

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

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

(f) information received in confidence from foreign Government;

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

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

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

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

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

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

(2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under secton 6 shall be provided to any person making a request under that section:

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

9 Without prejudice to the provisions of section 8, a Central Public Information Officer or a 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.

10 (1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this

Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

(2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—

(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) the name and designation of the person giving the decision;

(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the 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, time limit, process and any other form of access.

11 (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information: Provided 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.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

CHAPTER III
The Central Information Commission

12 (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Central Information Commission shall consist of—

(a) the Chief Information Commissioner; and

(b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—

(i) the Prime Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed

to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The Chief Information Commissioner and 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.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

13 (1) The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:
Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every Information Commissioner 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 sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:
Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12:
Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

(3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:
Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

(5) The salaries and allowances payable to and other terms and conditions of service of —

(a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;

(b) an Information Commissioner shall be the same as that of an Election Commissioner:

Provided that if the Chief Information Commissioner or an Information 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 Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information 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 if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a 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 Information Commissioner or an Information 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 Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The Central Government shall provide the Chief Information Commissioner and the Information 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 purpose of

this Act shall be such as may be prescribed.

14 (1) Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information 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 President, 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 President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

(4) If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehavior.

CHAPTER IV
The State Information Commission

15 (1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the ..... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) 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, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Ministrer 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 recognised as such, the Leader of the single largest group in opposition of the Government 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 State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State 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.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information

Commission may, with the previous approval of the State Government, establish offices at other places in the State.

16 (1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every State Information Commissioner 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 sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:

Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15:

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

(3) The State Chief Information Commissioner or a State Information 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 form set out for the purpose in the First Schedule.

(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.

(5) The salaries and allowances payable to and other terms and conditions of service of—

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:

Provided that if the State Chief Information Commissioner or a State Information 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 Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information 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 State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a 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 State Chief Information Commissioner or the State Information 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 State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The State Government shall provide the State Chief Information Commissioner and the State Information 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 purpose of this Act shall be such as may be prescribed.

17 (1) Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information 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; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

(4) If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

CHAPTER V

Powers and functions of the Information Commissions, appeal and penalties

18 (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,—

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, 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 in sub-section (1) of section 19 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.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, 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 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) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

19 (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public

Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

20 (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till

application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

CHAPTER VI
Miscellaneous

21 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 any rule made thereunder.

22 The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

23 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.

24 (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 organisation 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.

25 (1) The Central Information Commission or State Information Commission, as the case may be, 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.

(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this

section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(3) Each report shall state in respect of the year to which the report relates,—

(a) the number of requests made to each public authority;

(b) 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;

(c) 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;

(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

(e) the amount of charges collected by each public authority under this Act;

(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

(g) 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 operationalising the right to access information.

(4) 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.

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

26 (1) 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 themselves.

(2) The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

(3) The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include—

(a) the objects of this Act;

(b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (1) of section 5;

(c) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;

(d) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;

(e) the assistance available from the Central Information Commission or State Information Commission, as the case may be;

(f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;

(g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;

(h) the notices regarding fees to be paid in relation to requests for access to an information; and

(i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

(4) The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

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

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(b) the fee payable under sub-section (1) of section 6;

(c) the fee payable under sub-sections (1) and (5) of section 7;

(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;

(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and

(f) any other matter which is required to be, or may be, prescribed.

28 (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(ii) the fee payable under sub-section (1) of section 6;

(iii) the fee payable under sub-section (1) of section 7; and

(iv) any other matter which is required to be, or may be, prescribed.

29 (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, 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 immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the 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 under that rule.

(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

30 (1) 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.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

31 The Freedom of Information Act, 2002 is hereby repealed.

THE FIRST SCHEDULE

[*See* sections 13(*3*) and 16(*3*)]

Form of oath or affirmation to be made by the Chief Information Commissioner/the Information Commissioner/the State Chief Information Commissioner/the State Information Commissioner

"I, ..., having been appointed Chief Information Commissioner/Information Commissioner/State Chief Information Commissioner/State Information Commissioner

swear in the name of God

solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.".

THE SECOND SCHEDULE

(*See* section 24)

Intelligence and security organisation established by the Central Government

1. **Intelligence Bureau.**
2. **Research and Analysis Wing of the Cabinet Secretariat.**
3. **Directorate of Revenue Intelligence.**
4. **Central Economic Intelligence Bureau.**
5. **Directorate of Enforcement.**
6. **Narcotics Control Bureau.**
7. **Aviation Research Centre.**
8. **Special Frontier Force.**
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. **Special Service Bureau.**
16. **Special Branch (CID), Andaman and Nicobar.**
17. **The Crime Branch-C.I.D.- CB, Dadra and Nagar Haveli.**
18. **Special Branch, Lakshadweep Police.**

ANNEXURE II- DELHI HIGH COURT (RTI) RULES, 2006

(TO BE PUBLISHED IN PART IV OF DELHI GAZETTE EXTRAORDINARY)

HIGH COURT OF DELHI: NEW DELHI

NOTIFICATION

No. 180 Rules/DHC Dated: 11th August, 2006

In exercise of the power conferred by sub-section (1) of Section 28 read with Section 2 (e) (iii) of the Right to Information Act, 2005, Hon'ble the Acting Chief Justice of the High Court of Delhi hereby makes the following Rules:-

1. Short title and commencement-(i) These Rules shall be called the Delhi High Court (Right to Information) Rules, 2006.

(ii) They shall come into force from the date of publication in the official Gazette.

2. Definitions-(1) In these rules, unless the context otherwise requires-

(a) 'Act' means the Right to Information Act, 2005 (No.22 of 2005);

(b) 'appellate authority' means designated as such by the Chief Justice of the Delhi High Court.

(c) 'authorized person' means Public Information Officers and Assistant Public Information Officers designated as such by the Chief Justice of the Delhi High Court;

(d) 'form' means the Form appended to these rules;

(e) 'section' means a Section of the Act;

(f) words and expressions used but not defined in these rules shall have the same meaning as assigned to them in the Act.

3. Application for seeking information- (a) Any person seeking information under the Act shall file an application from 11 A.M. to 1 P.M. on a Court working day to the authorized person in Form A and deposit application fee as per Rule 10 with the authorized person;

(b) The authorized person shall duly acknowledge the application as provided in Form B;

Provided that a person who makes a request through electronic form shall ensure that the requisite fee is deposited in cash with the authorized person within 7 days of his sending the request through the electronic form, failing which his application shall be treated as dismissed.

4. Disposal of application by the authorized person-(i) if the requested information does not fall within the jurisdiction of the authorized person, it shall order return of the application to the applicant in Form C as soon as practicable, preferably within 15 days, and in any case not later than 30 days, from the date of receipt of the application, advising the applicant, wherever possible, about the authority concerned to whom the application should be made. The application fee deposited in such cases shall not be refunded.

(ii) If the requested information falls within the authorized person's jurisdiction and is also in one more of the categories listed/mentioned in the Section 8 and 9 of the Act, the authorized person, on being satisfied, will issue the rejection order in Form D as soon as practicable, preferably within 15 days and in any case not later than 30 days from the date of receipt of the application.

(iii) If the requested information falls within the authorized person's jurisdiction, but not in one or more of the categories listed in Section 8 and 9 of the Act, the authorized person, on being so satisfied, shall supply the information to the applicant in Form E, falling within its jurisdiction. In case the information sought is partly outside the jurisdiction of the authorized person or partly falls in the categories listed in Section 8 and 9 of the Act, the authorized person shall supply only such information as is permissible under the Act and is within its own jurisdiction and reject the remaining part giving reasons therefor.

(iv) In so far as decisions which are taken administratively or quasi judicially, information therefor, shall be available only to the affected persons.

(v) The information shall be supplied as soon as practicable, preferably within 15 days, and in any case not later that 30 days from the date of receipt of the application.

However, the date of the application shall be deemed to be the date of deposit of the entire fee or the balance fee or deficit amount of the fee to the authorized person.

A proper acknowledgment shall be obtained from the applicant in token of receipt of information after production of Form B.

5. Exemption from disclosure of information- The information specified under Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed:-

(a) Such information which is not in the public domain or does not relate to judicial functions and duties of the Court and matters incidental and ancillary thereto.

(b) Information which has been expressly forbidden to be published by the Court or the disclosure whereof may constitute Contempt of Court; or information which includes 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; or information which would impede the process of investigation or apprehension of prosecution of offenders; or information which relates 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 Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

(c) Any information affecting the confidentiality of any examination conducted by Delhi High Court including Delhi Judicial Service and Delhi Higher Judicial Service. The question of confidentiality shall be decided by the Competent Authority whose decision shall be final.

6. Information which is to be furnished and access to records shall be subject to the restrictions and prohibitions contained in rules/regulations and destruction of records in force from time to time which may have been notified or implemented by this Court.

7. Appeal – (i) Any person –

(a) who fails to get a response in Form C or Form D from the authorized person within 30 days of submission of Form A, or

(b) is aggrieved by the response received within the prescribed period, appeal in Form F to the Appellate Authority and deposit fee for appeal as per Rule 10 with the Appellate Authority.

(ii) On receipt of the appeal along with required fee the Appellate Authority shall acknowledge the receipt of the appeal and after giving the appellant an opportunity of being heard, shall endeavor to dispose it of within thirty days from the date on which it is presented and send a copy of the decision to the authorized person concerned.

(iii) In case the appeal is allowed, the information shall be supplied to the applicant by the authorized person within such period as ordered by the Appellate Authority. This period shall not exceed thirty days from the date of the receipt of the order.

8. Penalties-(i) Whoever being bound to supplying information fails to furnish the information asked for under the Act within the time specified or fails to communicate the rejection order by notification shall be liable to pay penalty upto 50 Rupees per day for the delayed period beyond 30 days subject to maximum of 500 Rupees per application filed under rule 3, as may be determined by the appellate authority.

(ii) Where the information supplied is found to be false in any material particular and which the person is bound to supply it knows and has reasons to believe it to be false, or does not believe it to be true, the person supplying the information shall be liable to pay a penalty up to one thousand rupees, which may be imposed by the appellate authority.

9. Suo motu publication of information by public authorities – (i) The public authority may suo motu publish information as per sub-section (1) of Section 4 of the Act by publishing booklets and/or folders and/or pamphlets and up date these publications every year as required by sub-section (1) of Section 4 of the Act.

(ii) Such information may also be made available to the public through information counters and may also be displayed on the notice board at a conspicuous place in the office of the authorized person and the appellate authority.

10. Charging of application Fee – (i) The authorized person shall charge the fee at the following rates, namely:-

(A) Application Fee-

(i)	Information not relating to Rule 4(iv) Above	500 Rupees per application
(ii)	Information other than (i) above	50 Rupees per application

(B) Other fees-

Sl.No.	Description of information	Price/Fee in Rupees
1.	Where the information is available in the form of a priced publication	Price so fixed
2.	For other than priced publication rupees	Rs.5.00 per page Charges for Urgent Rs.10.00 Per page

(ii) The appellate authority shall charge a fee of 50 Rupees per appeal.

11. Maintenance of Records-(i) The authorized persons shall maintain records of all applications received for supply of information and fee charged.

(ii) the appellate authority shall maintain records of all appeals filed before and fee charged.

(TO BE PUBLISHED IN PART IV OF DELHI GAZETTE EXTRAORDINARY)

HIGH COURT OF DELHI: NEW DELHI

NOTIFICATION

No. 181 / Rules/DHC Dated : 11th August, 2006

In exercise of the power conferred under Section 5(1) and (2) of the Right to Information Act, 2005, High Court of Delhi hereby designate the following Officers as the Public Information Officer, Assistant Public Information Officer and Appellate Authority for High Court of Delhi, as required under Section 19 of the Right to Information Act, 2005: -

S.NO.	DESIGNATION	PARTICULARS OF THE DESIGNATED OFFICER
1.	APPELLATE AUTHORITY	REGISTRAR (ESTABLISHMENT) DELHI HIGH COURT, NEW DELHI
2.	PUBLIC INFORMATION OFFICER	JOINT REGISTRAR (ESTABLISHEMENT) DELHI HIGH COURT, NEW DELHI
3.	ASSISTANT PUBLIC INFORMATION OFFICER	ASSISTNAT REGISTRAR (ESTABLISHMENT) DELHI HIGH COURT, NEW DELHI

BY ORDER

Sd/-
(A.K. PATHAK)
REGISTRAR GENERAL

HIGH COURT OF DELHI: NEW DELHI

No._____/Rules/DHC Dated:_____

Copy of Notification No.181/Rules/DHC dated 11th August, 2006 pertaining to designating the Officers as the Public Information Officers, Assistant Public Information Officers and Appellate Authority for High Court of Delhi under Right to Information Act, 2005 and published in Delhi Gazette Extraordinary, Part IV (NCTD No.109) dated 11th August, 2006 is hereby circulated for information.

(RATTAN CHAND)
JOINT REGISTRAR (RULES)

NOTIFICATION

No. 117/Rules/DHC Dated: 8.5.2007

In exercise of the power conferred by sub-section (1) of Section 28 read with Section 2 (e) (iii) of the Right to Information Act, 2005, Hon'ble the Chief Justice of the High Court of Delhi hereby makes the following amendments in the Delhi High Court (Right to Information) Rules, 2006, which were notified vide Notification No.180/Rules/DHC dated 11th August, 2006, in Delhi Gazette Extraordinary, Part IV No.131 (N.C.T.D.No 109) dated 11th August, 2006 :-

AMENDMENT

The existing Rule 4(i) shall be substituted by the following Rule 4(i):-

"4. Disposal of application by the authorized person-(i) if the requested information does not fall within the jurisdiction of the authorized person, it shall forward the application to the concerned PIO as soon as practicable, preferably within 15 days, and in any case not later than 30 days, from the date of receipt of the application."

The existing Rule 10 shall be substituted by the following Rule 10:-

"10. Charging of application Fee – (i) The authorized person shall charge the fee at the following rates, namely:-

(A) Application Fee-

(i) Information not relating to Rule 4(iv) above. 50 Rupees per application.

(ii) Information other than (i) above. 50 Rupees per application.

(B) Other fees-

Sl.No.	Description of information	Price/Fee in Rupees
1.	Where the information is available in the form of a priced publication.	Price so fixed.
2.	For other than priced publication.	Rs.5.00 per page. Charges for urgent Rs.10.00 per page.

(ii) The appellate authority shall charge a fee of 50 Rupees per appeal."

By order of the Court,

Sd/-
(Ajit Bharihoke)
Registrar General

(Corrected as per Corrigendum No.117/Rules/DHC dated 31.1.2008)

HIGH COURT OF DELHI: NEW DELHI
NOTIFICATION

No. 275/Rules/DHC Dated: 29.10.2007

In exercise of the power conferred by sub-section (1) of Section 28 read with Section 2 (e) (iii) of the Right to Information Act, 2005, Hon'ble the Chief Justice of the High Court of Delhi hereby makes the following amendment in Delhi High Court (Right to Information) Rules, 2006, which were notified vide Notification No.180/Rules/DHC dated 11th August, 2006, in Delhi Gazette Extraordinary, Part IV No.131

(N.C.T.D. No. 109) dated 11th August, 2006 and further amended vide Notification No.117/Rules/DHC dated 8.5.2007 published in Delhi Gazette Extraordinary Part IV No. 80 (N.C.T.D. No. 30) dated 8.5.2007 :

THE FOLLOWING EXPLANATION SHALL BE INSERTED IMMEDIATELY BEFORE RULE 3(a) IN DELHI HIGH COURT (RIGHT TO INFORMATION) RULES, 2006 :-

"Explanation:- For each information sought, separate application shall be made. However, where more than one information sought is consequential or related to one another, applicant will be permitted to seek them in one application."

By order of the Court,
Sd/-
(Ajit Bharihoke)
Registrar General

(TO BE PUBLISHED IN PART IV OF DELHI GAZETTE EXTRAORDINARY)
HIGH COURT OF DELHI: NEW DELHI

NOTIFICATION

No. 46/Rules/DHC Dated: 22.01.2009

In exercise of the power conferred by sub-section (1) of Section 28 read with Section 2 (e) (iii) of the Right to Information Act, 2005, Hon'ble the Chief Justice of the High Court of Delhi hereby makes the following amendments in Delhi High Court (Right to Information) Rules, 2006, which were notified vide Notification No.180/Rules/DHC dated 11th August, 2006, in Delhi Gazette Extraordinary, Part IV No.131 (N.C.T.D. No. 109) dated 11th August, 2006, amended vide Notification No.117/Rules/DHC dated 8.5.2007 published in Delhi Gazette Extraordinary Part IV No. 80 (N.C.T.D. No. 30) dated 8.5.2007, further amended vide Notification No.225/Rules/DHC dated 29.10.2007 published in Delhi Gazette Extraordinary Part IV No. 185 (N.C.T.D. No. 206) dated 29.10.2007 and corrected vide Corrigendum No. 117/Rules/DHC dated 31.1.2008 published in Delhi Gazette Extraordinary Part IV No. 19 (N.C.T.D. No. 301) dated 31.1.2008:-

I. Amendment in Rule 4(i)

In Rule 4(i) the words ", preferably within 15 days," in between "as soon as practicable" and "and in any case" shall stand deleted and the figure "30" in between "later than" and "days" shall be substituted by the figure "5".

II. Amendment in Rule 4(iv)

The rule shall stand deleted.

III. Amendment in Rule 5(a)

The existing Rule 5(a) shall be substituted by the following Rule 5(a):-

5. Exemption from disclosure of information- The information specified under Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed:-

(a) Such information which relates to judicial functions and duties of the Court and matters incidental and ancillary thereto.

IV. Amendment in Rule 8

The rule shall stand deleted.

BY ORDER OF THE COURT

Sd/-
(AJIT BHARIHOKE)
REGISTRAR GENERAL

ANNEXURE III- DELHI POLICE MANUAL FOR RTI

Manual 16

Name designation etc. of Public Information Officers

Sec. 4[1][b][xvi]

Notification

Subject:- Designating of Public Information Officers and Appellate Authorities as per The Right to Information Act, 2005 [Act No. 22 of 2005].

ORDER UNDER SECTION 5[1] OF THE RIGHT TO INFORMATION ACT, 2005

In exercise of powers conferred upon the undersigned as "Competent Authority" under section 5[1] of The Right to Information Act, 2005, the following officers as shown in column No. 04 are hereby designated/notified as "PUBLIC INFORMATION OFFICER", officers as shown in column No.3 as "ASSISTANT PUBLIC INFORMATION OFFICERS" and officers shown in column No. 5 as "APPELLATE AUTHORITY", who are falling under the administrative control of Commissioner of Police and Special Commissioner of Police, Delhi for their respective officers.

SI. No.	Name of the Office	Rank of officer Designated as "APIO"	Rank of officer Designated as "PIO"	Appellate Authority
[I]	[2]	[3]	[4]	[5]
I	**Districts** .	Assistant Commissioner of Police/Headquarter of the Districts	Addl. Deputy Commissioner of Police-I/Districts.	Deputy Commissioner of Police/Districts
II	**Units**			
1.	Crime & Railways.	Asstt. Commissioner of Police/Crime, [Hdqrs.]	Deputy Commissioner of Police/Crime	Addl. Commissioner of Police/Crime
2.	Economic Offences Wing	Asstt. Commissioner of Police/EOW/HQ	Deputy Commissioner of Police/EOW	Addl. Commissioner of Police/EOW
3.	Vigilance	Asstt. Commissioner of Police/Vigilance.	Deputy Commissioner of Police/Vigilance.	Addl. Commissioner of Police/Vigilance
4.	Traffic	Asstt. Commissioner of Police/Traffic (Headquarter)	Deputy Commissioner of Police/Traffic (Headquarter)	Additional Commissioner of Police/Traffic
5.	Licensing	Assistant Commissioner of Police/Headquarter/ Licensing.	Deputy /Addl. Deputy Commissioner of Police/licensing.	Addl. Commissioner of Police/ Licensing
6.	Departmental Enquiry Cell	Assistant Commissioner of Police/Headquarter (Departmental Enquiry Cell)	Deputy Commissioner of Police/Departmental Enquiry Cell	Addl. Commissioner of Police/Vigilance.
7.	Security	Asstt. Commissioner of Police/Hdqrs.	Deputy Commissioner of Police/Security.	Addl. Commissioner of Police/Security
8.	Security, (8th, 9th & 10 th) Battalions	Asstt. Commissioner of Police/Security.[HQ]	Deputy Commissioner of Police/Security.	Addl. Commissioner of Police/Security
9..	Security [P.M.]	Asstt. Commissioner of Police/ P.M. Security.[HQ]	Deputy Commissioner of Police/Security.[P.M.]	Addl. Commissioner of Police/ Security[P.M.]
10.	1ST, 3rd, 4th, 6th 7th and 11th to 15th Battalions	Asstt. Commissioners of Police/Hdqrs.	Deputy Commissioners of Police	Addl Commissioner of Police/Armed Police/ Joint C.P./ Special C.P./ Armed Police

11.	Police Control Room	Assistant Commissioner of Police/Headquarter/ Police Control Room	Deputy Commissioner of Police/Police Control Room	Addl./Joint Commissioner of Police/ Operations.
12.	Special Branch.	Asstt. Commissioner of Police/Special Branch	Deputy Commissioner of Police/Special Branch	Addl. Commissioner of Police/Special Branch
13.	Communication	Assistant Commissioner of Police/Headquarter/ Communication	Deputy Commissioner of Police/ Communication.	Addl. /Joint Commissioner of Police/ Operations.
14.	IGIA	Asstt. Commissioner of Police/Headquarter/ IGIA	Deputy Commissioner of Police/IGIA	Addl. /Joint Commissioner of Police/ Ops.
15.	Recruitment	Assistant Commissioner of Police/Headquarter/ Recruitment	Deputy Commissioner of Police/Recruitment	Addl. Commissioner of Police/Armed Police
16.	Special Cell	Asstt. Commissioner of Police/Special Cell [HQ]	Deputy Commissioner of Police/Special Cell	Joint Commissioner of Police/Special Cell
17.	Training	Asstt. Commissioner of Police/Police Training College .[HQ]	Principal/ Police Training College	Joint C.P./Training
18.	Provisioning & Logistics	Asstt. Commissioner of Police/Provisioning & Logistics.[HQ]	Deputy Commissioner of Police/Provisioning & Logistics.	Joint Commissioner of Police/ Provisioning & Logistics.
19.	Crime Against Women	Assistant Commissioner of Police/Headquarter (Crime Against Women)	Deputy Commissioner of Police/Crime Against Women	Joint Commissioner of Police/ Crime Against Women
20.	Riot Cell	Assistant Commissioner of Police/Headquarter/ Riot Cell	Deputy Commissioner of Police/Riot Cell	Joint Commissioner of Police/Riot Cell, New Delhi
21.	Rashtrapati Bhawan	Assistant Commissioner of Police/Headquarter/ Rashtrapati Bhawan	Deputy Commissioner of Police/Rashtrapati Bhawan	Joint Commissioner of Police/Rashtrapati Bhawan
22	(i)Establishment Branch/PHQ (ii)Confidential Branch, (iii)Recruitment Cell, (iv) Personnel Branch, (v) Record Branch	Deputy Commissioner of Police, Establishment	Addl. Commissioner of Police/PHQ	Joint Commissioner of Police, Hdqrs.
23	Headquarters (i)General Admn. Branch, (ii) Account Branch (iii) QAC, (iv) C&T Branch, (v) 'X' Branch, (vi)CR Br. PHQ, (vii) Land &	Deputy Commissioner of Police, Headquarters	Addl. Commissioner of Police/PHQ	Joint Commissioner of Police, Hdqrs.

	Building, (viii)Legal Cell			

The Police Officers designated as Assistant Public Information Officer, Public Information Officer and First Appellate Authority as stated hereinabove will function strictly as per the provisions of THE RIGHT TO INFORMATION ACT- 2005.

This notification supersedes all earlier notifications, addendums & corrigendums issued in this regard.

[KEWAL SINGH]Addl.C.P./PHQ
for Commissioner of Police, Delhi

No. XXIV/29/SPL./2693-2792/C&T, AC-I (RTI)/PHQ., dated Delhi the 2.3.09

ADDENDUM

Subject:- Designating of Public Information Officers and Appellate Authorities as per The Right to Information Act, 2005 [Act No. 22 of 2005].

ORDER UNDER SECTION 5[1] OF THE RIGHT TO INFORMATION ACT, 2005

In continuation to this Hdqrs. Notification issued vide No.XXIV/29/SPL./2693-2792/C&T, AC-I[RTI]/PHQ dated 2.3.2009, the Addl. DCP (II) may work as Public Information Officer of that District under RTI Act- 2005, where the Addl.DCP (I)/PIO is not posted.

-sd-
[KEWAL SINGH]Addl.C.P./PHQ
for Commissioner of Police, Delhi

No. XXIV/29/SPL./3723-3822 /C&T, AC-I (RTI)/PHQ., dated Delhi the 25.3.09

ADDENDUM

Subject:- Designating of Public Information Officers and Appellate— Authorities as per The Right to Information Act, 2005 [Act No. 22 of 2005].

ORDER UNDER SECTION 5[1] OF THE RIGHT TO INFORMATION ACT, 2005

In continuation to this Hdqrs. Notification issued vide No.XXIV/29/SPL./2693-2792/C&T, AC-I[RTI]/PHQ dated 2.3.2009 & addendum No. XXIV/29/Spl./3723-3822/C&T, AC-I[RTI]/PHQ dated 25.3.2009 on the subject cited above, the rank of officer designated Public Information Officers, First Appellate Authority and Assistant Public Information Officer in (Sl. No. 22 & 23) respectively may be read as under:-

Sl. No.	Name of the Office	Rank of Officer Designated as "APIO"	Rank of officer Designated as "PIO"	Appellate Authority
22.	(i)**Establishment Branch/PHQ** **[Nodal Branch for making Diaries & Dispatch, preparing of replies, Appeals etc. for PIO(Estt.)/ 1st Appellate Authority of Headquarters(Estt.) for all RTI cases],** (ii) Confidential Branch, (iii)Recruitment Cell/PHQ (iv)Personnel Branch (v) IT Centre/PHQ	Assistant Commissioners of Police/Personnel and Confidential Branch	Deputy Commissioner of Police, Establishment	Joint Commissioner of Police, Headquarters

23.	(i) **C&T Branch/RTI Desk/ PHQ** **[Nodal Branch for making Diaries & Dispatch, preparing of replies, Appeals etc. for PIO(Hdqrs.)/ 1st Appellate Authority of DCP/PIO/Hdqrs. for all RTI Cases]** (ii)QAC (iii) 'X' Branch' (iv) Land & Building (v) Legal Cell (vi) Court Cell (vii)General Admn. Branch (viii)Character Roll Branch/PHQ, (ix) Hindi Cell, (x) F.A. Branch (xi) Senior Citizen Cell)	Assistant Commissioners of Police/C&T and General Branch	Deputy Commissioner of Police, Hdqrs.	Joint Commissioner of Police, PHQ

Besides this, Addl. Deputy Commissioner of Police, General Admn. will be Nodal Officer of the Central point [RTI Cell/PHQ], who will receive the applications/appeals of all PIOs/First Appellate Authority of PHQ centrally as per O.M. No. 1/32/2007-IR of DOPT and sent it to the concerned for further necessary action.

This issues with the approval of C.P. Delhi.

-sd-
[M.A. SAYED]
[Joint Commissioner of Police]/PHQ
for Commissioner of Police, Delhi

No. XXIV/29/SPL./7531-630/C&T, AC-I (RTI)/PHQ., dated Delhi the 16.6.09

CORRIGENDUM/ADDENDUM

Subject:- Designating of Public Information Officers and Appellate Authorities as per The Right to Information Act, 2005 [Act No. 22 of 2005].

ORDER UNDER SECTION 5[1] OF THE RIGHT TO INFORMATION ACT, 2005

In continuation to this Hdqrs. Notification issued vide No. XXIV/29/Spl./2693-2792/C&T, AC-I/[RTI]/PHQ dated 2.3.09, addendum No. XXIV/29/Spl./3723-3822/C&T, AC-I[RTI/PHQ dated 25.3.09 and No. XXIV/29/Spl./7531-630/C&T[AC-I]/PHQ dated 16.6.09 on the subject cited above, the rank of officer designated Public Information Officers, First Appellate Authority and Assistant Public information Oficer in (Sl. No. 1) may be read as under:-

SL. No.	Name of Office	Rank of Officer Designated as "APIO"	Rank of officer Designated as "PIO"	Appellate Authority
1.	Crime & Railways	Assistant Commissioner of Police/Hdqs. (Crime)	Addl. Deputy Commissioner of Police, Crime	Deputy Commissior Police, Crime

This issue with the approval of C.P. Delhi.

-sd-
[M.A. SAYED]
[Joint Commissioner of Police]/PHQ
for Commissioner of Police, Delhi

No. XXIV/29/SPL./8101-8200 /C&T, AC-I (RTI)/PHQ., dated Delhi the 25/6/09

CORRIGENDUM/ADDENDUM

Subject:- Designating of Public Information Officers and Appellate Authorities as per The Right to Information Act, 2005 [Act No. 22 of 2005].

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ORDER UNDER SECTION 5[1] OF THE RIGHT TO INFORMATION ACT, 2005

In continuation to this Hdqrs. Notification issued vide No.XXIV/29/SPL./2693-2792/C&T, AC-I[RTI]/PHQ dated 2.3.2009, addendum No. XXIV/29/Spl./3723-3822/C&T, AC-I[RTI]/PHQ dated 25.3.2009 and No. XXIV/29/Spl./7531-630/C&T[AC-I]/PHQ dated 16.6.09 and No. XXIV/29/SPL./8101-8200/C&T,AC-I{RTI]/PHQ dated 25.6.09 on the subject cited above, the rank of officer designated, First Appellate Authority of Police Control Room (Sl. No. 11 of notification dated 2.6.09) may be read as Additional Commissioner of Police, Police Control Room, New Delhi instead of Addl.Jt.C.P./Operations. Moreover, the rank of officer designated as Public Information Officer Establishment Branch/PHQ (Sl. No. 22 of addendum dated 16.6.09) may be read as Addll. DCP/DCP/Establishment.

-sd-
[M.A. SAYED]
[Joint Commissioner of Police]/PHQ
for Commissioner of Police, Delhi

No. XXIV/29/SPL./8301-8400 /C&T, AC-I (RTI)/PHQ., dated Delhi the 29/6/09

CORRIGENDUM/ADDENDUM

Subject:- Designating of Public Information Officers and Appellate Authorities as per The Right to Information Act, 2005 [Act No. 22 of 2005].

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ORDER UNDER SECTION 5[1] OF THE RIGHT TO INFORMATION ACT, 2005

In continuation to this Hdqrs. Notification issued vide No.XXIV/29/SPL./2693-2792/C&T, AC-I[RTI]/PHQ dated 2.3.2009, addendum No. XXIV/29/Spl./3723-3822/C&T, AC-I[RTI]/PHQ dated 25.3.2009 and No. XXIV/29/Spl./7531-630/C&T[AC-I]/PHQ dated 16.6.09 and No. XXIV/29/SPL./8101-8200/C&T,AC-I{RTI]/PHQ dated 25.6.09 on the subject cited above, the rank of Nodal Officer of the Central point [RTI Cell/PHQ] [as mentioned Addendum dated 16.6.09] may be read as ACP/C&T instead of Addl. Deputy Commissioner of Police, General Admn., who will receive the application/appeals of all PIOs/First Appellate Authority of PHQ centrally as per O.M. No. 1/32/2007-IR of DOPT and sent it to the concerned for further necessary action.

This issues with the approval of C.P. Delhi.

-sd-
[M.A. SAYED]
[Joint Commissioner of Police]/PHQ
for Commissioner of Police, Delhi

No. XXIV/29/SPL./8345-8445 /C&T, AC-I (RTI)/PHQ., dated Delhi the 2/7/09