



BLOCK 4

**TOWARDS GOOD GOVERNANCE THROUGH
RIGHT TO INFORMATION: INITIATIVES AND
IMPACT**

BLOCK 4 TOWARDS GOOD GOVERNANCE THROUGH RIGHT TO INFORMATION: INITIATIVES AND IMPACT

Lastly, this Block contains five units, that is, significance of the RTI for good governance, judgments of the Supreme Court and High Court as an instrument for facilitating the RTI enforcement, success stories, which highlight efforts to realise transparency and accountability in the functioning of the Government, role of RTI and Social Audit in promoting transparency and accountability in effective implementation of the government schemes/programmes, and bridging the gap between rights and their enforcement.

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

The RTI is an overarching code that seeks to ensure good governance. Its significance can be understood from the study of eleventh unit, which deals with the need for RTI in India, issues in governance, importance of the RTI in governance, and clear understanding of the background and evolution of the RTI Act in India.

The twelfth Unit highlights the Judgements of the Supreme Court and High Courts, which proved as an effective instrument for facilitating the RTI enforcement. In this regard, this Unit focuses on important decisions relating to the RTI and analysis of the interpretation given to various provisions of the RTI Act by the Judiciary.

This Unit also contains success stories, which motivate the stakeholders and citizens to make efforts to realise the transparency and accountability in the government functioning

The thirteenth Unit compiles the good practices in India, at both Central and State levels relating to some key issues under the RTI Act. It highlights some of the good practices being successfully adopted by various agencies for implementation of the RTI Act. It also brings forth the benefits, outcomes and lessons learnt by the concerned public authorities during implementation of the said practices.

This Unit also highlights some good practices related to the RTI, which are successfully implemented at various levels, focusing on the following key aspects:

- a) Use of Information and Communication Technologies to strengthen the implementation of the RTI Act;
- b) Effective use of the RTI Act to improve access of marginalised population to specific government schemes - specifically MGNREGS and PDS;
- c) Implementation of suo motu provisions of the RTI Act; and
- d) Other good practices, including awareness generation.

The fourteenth Unit on Social Audit focuses on the meaning, objectives and significance of the Social Audit in India, role of the Social Audit in selected schemes, process and significant steps in the Social Audit; major issues and challenges in conducting Social Audit; practice of the Social Audit in states, and the innovative practices that may be replicated in other states and measures for effective Social Audit. In the process of Social Audit, team members need access to various government documents to monitor the implementation of the scheme/programme; and provision for beneficiaries. As the Social Audit is fact finding, that is, based on evidences and documents, therefore, in case of non-availability of documents due to malafide intentions of the bureaucracy, necessary documents can be obtained through the RTI. Keeping above in view, it can be stated that the RTI is a tool against corrupt practices and plays an important role in Social Audit also.

The study in fifteenth Unit explores the problems, lacunas, gaps in implementation of the RTI Act, 2005. It identifies shortcomings in the Act itself, which have been responsible for its poor implementation. In addition, apathetic attitude of public authorities create bottlenecks in the realisation of right to information. The Unit focuses on the initiatives of the Government and role of the Civil Society Organisations for effective implementation of the RTI Act. It analyses the recommendations of the First Report of Second Administrative Reforms Commission, 2006, which unfortunately could not be implemented properly. It also highlights the stakeholders under the RTI Act like government, information seekers, public authorities, information commissions, civil society organisations, media and corporate sector. In the last part, it suggests a number of steps, which can be taken for bridging the gap between the problems being faced in implementation of the RTI Act and its enforceability that will assure an era of accountable and transparent administration and participatory democracy.



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UNIT 11 SIGNIFICANCE OF RIGHT TO INFORMATION FOR GOVERNANCE*

Structure

- 11.0 Objectives
- 11.1 Introduction
- 11.2 Right to Information: Governance Reform Agenda
- 11.3 Significance of the Right to Information for Governance
- 11.4 Precursors to the RTI Law: Movement for Transparency
- 11.5 Enactment of the RTI Law and its significance
- 11.6 Conclusion
- 11.7 Glossary
- 11.8 References
- 11.9 Answers to Check Your Progress Exercises

11.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the need for Right to Information in India;
- Highlight the issues in Governance;
- Explain the importance of Right to Information in Governance; and
- Describe the background and evolution of the Right to Information Act in India.

11.1 INTRODUCTION

India had inherited from colonial rule, a culture of secrecy in the affairs of state. Its persistence even after Independence remained an affront on the democratic governance of the country. The institutionalisation of the parliamentary democracy at the Union and at the state levels with the constitutionalism in the 1950 and holding the parliamentary and state legislative elections periodically through an independent election commission left several things to be desired for qualitative changes in the patterns of governance at the national, state and local levels. It continued to remain

* Contributed by Dr. Rajvir S. Dhaka, Senior Faculty Member, Haryana Institute of Public Administration, Gurgaon, Haryana.

shrouded in secrecy. Consequently, the red tape, the inefficiency, misuse of power, large scale corruption, mis-utilisation of funds, magnitude of poverty, denying of the benefits of the central sponsored schemes and social welfare programmes, continued to remain elusive to those for whom these had been designed.

As a matter of fact, democracy is not merely an institution of government through a process of universal franchise based elections. Even the conduct of fair elections and change of hands at power are not enough for good governance. However, canons of democracy do provide a political environment necessary for achieving good governance. Innovative and citizen-centric measures are also needed for fulfilling people's aspirations for responsiveness, accountability, transparency and accessibility. The Right to Information (RTI) is an overarching code that seeks to ensure good governance to the citizens.

Free flow of information is not only crucial for putting into place a rights based democracy but also for protecting human rights. Since the Independence, several rights of the citizens have been infringed upon over the years due to a systemic denial of accountability and transparency in governance. The problem has further compounded by ambiguous, mystifying and cumbersome rules, regulations and procedures. This mechanism has been further reinforced through introduction of multiple controlling devices and virtual absence of commitment to equity and fair play. The colonial legacy of the veil of secrecy continued to persist despite periodic pronouncements and promises made against it by the successive governments. Therefore, a legislation had become overdue to eliminate this obstacle on the way to a transparent governance. Enactment of the RTI Act has to be seen in this perspective. It is a landmark legislation for bringing transparency and accountability, which are the basic pre-requisites for good governance.

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

The RTI is an overarching code that seeks to ensure good governance. Its significance can be understood from the study of eleventh unit, which deals with the need for RTI in India, issues in governance, importance of the RTI

in governance, and clear understanding of the background and evolution of the RTI Act in India.

11.2 RIGHT TO INFORMATION: GOVERNANCE REFORM AGENDA

Right to Information has acquired a universal recognition. The emergence of new democracies in the 1980s after the collapse of authoritarian regimes too led to the creation of an enabling environment for the enactment of new constitutions, which specifically guarantee the right to information. At the same time, older democracies like United Kingdom too have realised the wisdom of enacting a legislation ensuring right to information for citizens. Ever since its enactment in 1976 in The United States of America, a large number of nations have adopted the legislations that confer on their citizens an uninhibited right to information.

The intergovernmental organisations, civil society and many sections of the people have contributed in a big way to this epoch making statute. It is now being widely recognised as a Fundamental Human Right, which not only upholds the inherent dignity of all human beings but also forms the crucial underpinning of participatory democracy. Above all it ensures accountability in the system, which is *quid pro quo* for good governance.

It has now been widely accepted that to be meaningful, a democracy ought to be based on the notion of an informed public participation in governance. The information and knowledge are the key instruments for transformation because these enable people to engage with their representatives and the bureaucracy on an ongoing basis for enabling them to participate effectively in the formulation and implementation of policies for their benefits. It goes without saying that an empowered citizenry is needed for making administration more accountable through people's participation. It also ensures greater transparency in government functions and also acts as a deterrent against the arbitrary exercise of official powers.

The Right to Information has not only improved governance but also made the management of the corporate houses and industries, more transparent and accountable which operate for profit. That is why, the RTI Act has received wide recognition as an essential step towards good governance. Even international organisations like the World Bank, the International Monetary Fund, the United Nations Development Programme and the Asian Development Bank have recognised the right to information as a useful remedy to administrative ills.

Since the transparency promotes democratic governance, the access to information has been included by more than 50 countries in their

constitutions. Further, more than 80 countries have made provisions for information laws. Many more are in the process of doing so. The enactment of the RTI Act (2005) undoubtedly, brought about a paradigm shift in Indian democracy. Its working for more than 15 years in India shows that the response to it has been very positive. A wide spectrum of people from various strata of society have been consistently seeking different types of information from various authorities.

11.3 SIGNIFICANCE OF THE RIGHT TO INFORMATION FOR GOVERNANCE

Although the Right to Information had already acquired judicial recognition as a part of the Fundamental Right to Freedom of Speech and Expression, the Right to Information is an important attribute of governance on account of the following reasons:

1. **i) A Step for Ensuring Good Governance:** Good governance is mainly defined as transparent, efficient, corruption free, people friendly, responsible, democratic and decentralised governance. The Right to Information has ensured good governance by promoting transparency and public accountability in the working of government functioning. It is also an acknowledgement of citizens' entitlement to seek clarity about decision-making and implementation of the key policies. The impact of public services can undoubtedly be enhanced through scrutiny of the stakeholders. The Right to Information regime has promoted good governance by checking corruption, misuse of power and pilferage of money. It has also been able to bring about transparency in the governance to a considerable extent. The self-disclosure of information by public authorities on their websites, and in their annual reports, displays on notice boards and walls have helped in setting out a practical regime of transparency.
- ii) **An instrument for compliance with World Bank and Other International Organisations:** The international bodies like the United Nations Organisation, the Commonwealth of Nation, the Council of Europe and the Organisation of American States too have drafted guidelines or model legislation to promote freedom of information. The World Bank, the International Monetary Fund and other donors have been consistently pressing the recipient countries to enact laws to enable their citizens to have access to information for ensuring increase in transparency and reduction in corruption. As a matter of fact, the international community has exercised considerable influence to promote the right to information as a fundamental and constitutional right.

iii) Upholding People's Empowerment through Participation:

Governance in a democracy requires that the citizens must have necessary information to make informed decisions to participate effectively in the process of governance. The RTI Act has been enacted in India for achieving that objective. It aims at sharing of important information with the people so that they may be empowered to participate effectively in the decision-making process. Free flow of information, as a matter of fact, is a significant measure to instil in them a sense of ownership in the government policies and programmes. It also ensures their informed cooperation in development agenda and the administration. The RTI regime is a step towards the institutionalisation of participatory democracy. It has made all the citizens of India partner in the process of governance at all levels of government.

iv) A Step Towards Democratisation of Governance: Access to information also fulfils a basic requirement for democratisation of governance. It helps in checking misuse of administrative authority for private gains and promotes justice and equity by promoting accountability. Openness in the actions and activities of the government also inspires its citizens to make informed choices. Democracy is not just election of representatives for governing, it is also about being making people equal partners in the matters that have bearing on their life. A meaningful deepening of the democracy up to the grassroots level can be achieved only by providing information to the people about beneficial outcome of the policies and programmes of the government.

v) Enhancement of Public Accountability: Accountability is not merely a matter of throwing open the records; it is more a state of mind where every action is taken with a conscious awareness that each and every act has to conform to the norms of probity. It is only a high level of public spiritedness that could motivate one to become answerable to her/his citizens. The right to information goes a long way in promoting a culture of accountability by providing access to the citizens all the information pertaining to finances, proceedings and decisions of all the social actors whose activities have an effect on their life. Answerability is a precursor for ending mismanagement and malpractices in the affairs of state.

vi) Ensuring Rule of Law: Openness and answerability in the governance mechanism also ensure a non-arbitrary form of government. Transparency in the processes and practices of the government also prevent arbitrary use of power. Besides, it helps in building the institutional mechanisms and norms that are necessary to enforce rule

of law in a society. The principles of transparency and accountability that have become identifiable with the right to information worldwide, seek to ensure rule of law by creating clarity of purpose and by making the actions of the government more culpable and responsible for compliance with the laws governing the conduct of public authorities.

- vii) **Quest for Combating Corruption:** Secrecy is often a breeding ground for corruption. The governments take measures like financial and executive audit of performance for this purpose. But in the absence of transparency, even these apparatuses fail to check the threats to veracity and integrity in processes and functioning of officials remain shrouded in secrecy. The obligations of government are driven by the citizens' right to information making the policies, and for making, implementations and service delivery less susceptible to corruption. The right to information provides to every citizen an enforceable right to question, examine, audit, review and assess government acts and decisions.
- viii) **Creation of an Instrument against Misuse of Discretionary Powers:** The checks and balances are necessary for ensuring prevalence of righteousness in public policy and governance. But there is hardly any inherent mechanism to curb malicious intent for misuse of official authority in most of the government systems. Since the officers have a tendency of abusing their discretionary powers to misappropriate public funds and promote political or vested interests, the right to information has been enacted for checking these. This misuse is manifest in uneven application and implementation of policies. The Right to Information can be used for highlighting such misuse of powers. However, it can play greater role as a deterrent rather than a regulator.
- ix) **Helpful in promoting Administrative Efficiency:** The Administrative efficiency is a matter of assessment in relation to several factors. Time and again efforts are made to establish and follow the basic and workable standards of efficiency. Together with certain other measures like the Right to Services, the Right to Information seeks to promote administrative efficiency in Government by checking unnecessary delays. A public authority may not be under obligation to disclose the reason for the delay in decision-making but a citizen must be armed with the information on how the things have been pending in offices so that they can seek judicial remedy in claiming damages caused to them by it by using the right to information. This has forced the functionaries in administration to remain vigilant in this context because they can be questioned by citizens through this instrument. The importance of right to information can be judged by the fact that

erring officials have to disclose the reasons for it. The RTI Act has thus empowered the citizens to seek justice and get solutions.

- x) **Creation of a Democratic and Open Society:** Equity before law is the true hallmark of an open society and democratic system. There can be no democratic participation in decision-making without transparency and sharing of information. Free flow of information is also essential to identify and solve problems. A secretive governing system creates suspicion. A long-term partnership between the government and citizens ought to be built upon a deep-rooted trust. And, the trust emanates from openness. An obscurity or secrecy on the part of a public authority is an antithesis to it. The strength of a democratic society lies in the acceptance of citizens' Right to Information rather than in its denial. Even the closed societies like China and Russia have been forced to provide access to information to their citizens to a limited extent.
- xi) **The Quest for the Promotion of Civil Liberties:** The exercise of the right to information by citizens is likely to make the government responsive to community needs. It has empowered the people to expose corrupt and arbitrary actions against a community or a group of people of a society. The protection of civil rights gets a fillip when the agencies of government are obliged to function in an open environment. Some departments entrusted with the enforcement powers are known to have tendency for high-handedness and of brushing such actions under the carpet behind the privilege of secrecy, which they had been enjoying since long. The right to information can be used as a powerful tool for protecting liberties of citizens. It has also made it easier for Civil Society Groups to monitor wrong-doings like custodial deaths and misuse of preventive detention legislation.
- xii) **Helpful in Reducing Poverty:** Peoples' empowerment is directly related to their access to means of livelihood. The genesis of the right to information in India can be traced to the struggle by the rural poor for wages, livelihood and land. Legislation on right to information is thus, also necessary for eradication of poverty by making the social welfare and poverty alleviation programmes and policies, transparent and open to stakeholders' scrutiny. Information gathered through the right to information can be helpful in empowering poor communities for fighting their battles. Public Distribution System, which impacts poor may be cited as one of the examples in this context. There has been a sea change in the maintenance of the records of stock and their distribution. These have also been thrown open for the public after the implementation of the RTI Act.

- xiii) Ensures Effective Implementation of the Government Schemes:** Numerous central and state schemes that have been launched for providing food, housing, employment and education are being implemented in rural areas. Availability of information on the utilisation of their funds would certainly improve their implementation. Transparency in the procedures for availability and allocation of benefits of these schemes is essential to ensure equity and fair play. These can only be ensured by strong RTI regime.
- xiv) Role of the RTI in Educating the Beneficiaries:** The right to information has also played an important role as an instrument of extension. It has created awareness among the beneficiaries of various centrally sponsored schemes and state welfare programmes. The information gathered through this instrument by relatively better aware sections has also helped in the uninformed sections regarding their entitlements and emboldened them to demand the same from the implementation of these schemes and programmes. It has, in turn, added value to the development programmes.
- xv) Introduced Transparency in Admissions and Recruitments:** Before the RTI regime had been put into place, there was no transparency in the process of admissions to the higher institutions of learning as well as in technical and professional colleges. The meritorious candidates were often ignored for admitting the favourites. Likewise there was lack of transparency in the recruitment for posts in the states. The claims of deserving persons were not taken into account for providing jobs to persons having links with powerful political leaders or those who had money power. But the RTI regime now ensures that merit is not ignored.
- xvi) An Instrument for Reforming Administration:** The RTI Act provides a mechanism for fixing the responsibility on the government servants. Hence it can significantly help in improving governance. The Second Administrative Reforms Commission of India, in its report and recommendations, has highlighted in details the co-relation between the bureaucratic transparency and governance reform.
- xvii) Provided Statutory basis for an Implied Fundamental Right:** The Right to Information is a Fundamental Right, which flows from Article 19(1)(a) of the Constitution. Over the years, the Supreme Court has been consistently ruling in favour of the citizens in its judgments Right to Know as a part of their Right to Freedom of Speech and Expression under Article 19(1) (a) of the Constitution. But the judgments had remained ornamental till the enactment and implementation of the RTI Act.

xviii) Effective Source for Stronger Media:The media – the newspapers, radio, television, etc. serve as a link between the citizens and the government. Hence, it is essential that they have free access to information. Balanced reporting becomes difficult when the primary sources of information are denied to the media. In the absence of an access to information, they tend to provide biased news and may also suppress or distort information. The right to information has empowered both media and citizens for making the Government more accountable to the people.

Check Your Progress 1

- Note i) Use the space given below for your answers.
ii) Check your answers with those given at the end of the Unit.

1) Explain the need for Right to Information in governance.

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2) Examine the role and importance of RTI in improving administrative system for governance.

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3) Discuss the benefits of Right to Information to the common man in India.

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11.4 PRECURSOR TO THE RTI LAW: MOVEMENT FOR TRANSPARENCY

The Right to Information has been made possible by continuous struggles, which had been launched by many activists' and citizens' groups. As the first step in that direction the Mazdoor Kisan Shakti Sangthan (MKSS), in Bhim Tehsil of Rajasthan in 1990, under the leadership of Aruna Roy launched a programme of Jan Sunwai (public hearing), which sought to make the elected and official representatives of the Panchayati Raj institutions accountable to the people by disclosing the manner in which the funds for various centrally sponsored schemes had been used, including the copies of bills and vouchers and names of persons who had been paid wages mentioned in muster-rolls for the construction of school, dispensaries, small dams and community centres. They began to demand the enactment of RTI law. The movement got legitimacy due to the various judgements of the courts. For instance, in the "State of UP vs Raj Narain" (1980), the Supreme Court of India had recognised the Right to Know as an inherent and implied Fundamental Right in the Freedom of Speech and Expression under Article 19(1)(a) of the Constitution. It got further strengthened because civil society organisations had begun to raise this demand in other states. It quickly spread to other areas of Rajasthan and other States. This was followed by the attempts of Harsh Mander, the Divisional Commissioner of Bilaspur, Madhya Pradesh, in 1996 to open the registers of Employment Exchanges and the records of Public Distribution System to the citizens. Anna Hazare also launched a movement in Maharashtra in 2001 for the Right to Information. A well-known academician and activist, Shekhar Singh, was also among others, who had lent active support to the long drawn battle for the Right to Information. The fact, that the right to information had already been institutionalised in several countries gave further legitimacy to this movement.

Ultimately, these movements culminated in the formation of an umbrella organisation, the National Campaign for People's Right to Information (NCPRI), in the late 1990s. It soon became a broad-based platform for action. As the campaign gathered momentum, it became clear that the right to information has to be made legally enforceable. This ultimately led to the enactment of RTI Act, 2005, which is more of a social legislation in nature than an administrative one. The Act goes, as a matter of fact, far beyond ensuring transparency and accountability. It is a harbinger of people's hope to see what goes on behind the closed doors of citadels of power and how their reach to the hallowed precincts of authority can assure equity and opportunity for them.

11.5 ENACTMENT OF THE RTI LAW AND ITS SIGNIFICANCE

In 2004, parliamentary elections led to the formation of United Progressive Alliance government at the centre under the leadership of Dr. Manmohan Singh. This government piloted the RTI Bill, 2005 in Parliament. It had been cleared by the Lok Sabha on May 11, 2005 and by the Rajya Sabha on May 12, 2005. The Bill had received assent of the President of India on June 15, 2005 and came in force on October 12, 2005. Around 150 Amendments had been introduced in the original draft of the Bill. The Act replaces relatively weak and ineffective legislation, the Freedom of Information Act, 2002, which had been passed for accepting the demand of NCPRI by The National Democratic Alliance (NDA) government.

The RTI Act, 2005 is a landmark in India's quest for the creation of a progressive and enlightened governance paradigm. It is an important step towards the ushering in of a society that has equity, inclusiveness and empowerment as its prime attributes. In anticipation of a radical change in the administrative culture and procedures, the new law had been implemented with a lot of enthusiasm all over the country. In some aspects the Act is, indeed, unique in its scope and implications. For example, an information seeker needs not to disclose the reason for his request or establish her/his *locus standi for demanding the same*. This signifies the pure public spirit that was behind the legislation. Rolling out and implementation of the Act had not been without major challenges. But the robust support from the successive governments has helped in firmly rooting the law in the elements of governance in India.

It is a promise that the citizens of the country had made to themselves. Once realised, it shall be changing the way as to how those in authority deal with people. Once rooted well in the administrative settings of India, the Act is likely to serve as a model for providing access to information for other countries of the developing and under developed world.

Check Your Progress 2

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

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

1) "The movements for transparency have contributed in enactment of the RTI law". Comment.

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2) Discuss the steps in enactment of RTI law and its significance.

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11.6 CONCLUSION

On the basis of the above discussion, it can be safely deduced that a robust RTI regime is the basic prerequisite for good governance. Over the past several years, the RTI has gained increasing prominence in the Human Rights discourse as well as in the larger democratic discourse. Since a democratic government must be sensitive to the public opinion, information must be made available by it to the people. It goes without saying, the greater the access of the citizens to information, the greater the responsiveness of government to community needs. Effective accountability largely rests on the people's acquaintance with the information. A system that operates in secrecy tends to lose the faith of the people as well as its own legitimacy and credibility. Openness and full access to information are the two pillars of the democratic state. These equip the citizens to participate meaningfully in the process of governance and development. Actually, meaningful substantive democracy can only be founded on the notion of an informed public, which is able to participate thoughtfully in its own governance. Information and knowledge are, as a matter of fact, the key instruments of transformation. Therefore, without sufficient information, representative democracy remains undermined. Hence, the enactment of the RTI Act and its institutionalisation in the form of RTI regime have been laudable steps. These have been functional for good governance to a considerable extent. The governance has undoubtedly strengthened by the right to information. That is why, it has been recognised as an essential requirement of the good governance. But, much more is needed through policy interventions for course correction. The culture of secrecy has to be rooted out and the culture of transparency will have to be deeply inculcated in the governance.

In the preceding fifteen years or so, the poor, deprived and marginalised sections of Indian society have experienced a perceptible change in their share of growth and prosperity, which had led to a better quality of the life to some extent. This has been made possible on account of a quantum check on the corruption in the welfare and livelihood generation schemes by the RTI Act. Central and State Information Commissions have gone a long way in inculcating the culture of maintenance of meticulous records and keeping of

data at every level of administration right from cabinet papers and file noting to muster rolls of MGNREGA and expenditures of a village panchayat. This itself is an achievement in the long journey to a transparent, accountable and responsive governance.

11.7 GLOSSARY

Transparency Regime: It refers to a system of governance in which people are able to know how various decisions are made by decision-makers at various levels of the government.

Discretionary Powers: It is that authority of an administrator in the government at various levels, where rules are not clear and decision can be made by her/him as per her/his individual judgment in the given situation and circumstances.

Participatory Democracy: It is a form of democracy, where people directly participate in the decision-making process in the government at its different levels.

Rule of Law: It stands for that system of governance in which decisions are made in accordance with the laws and rules. In such system, there is no place for arbitrary use of powers.

Open Society: An open society is that in which political system is democratic in character. It allows the citizens to express their opinions in a fearless manner. Besides, the elected representative are responsive to the feelings and aspirations of the people.

Civil Liberties: It refers to those Fundamental Human Rights, which not only ensure equality before law but also give to the citizens the right to freedom of expression, education, vocation and religious freedom, etc.

Enactment: this term mainly relates to the process of making of laws by the Union and State Legislatures, wherein they pass the bills placed before them and subsequently the assent of the President or the Governor of the State, as the case may be, is taken.

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11.9 ANSWERS TO YOUR CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Your answer should include the following points :
 - Introduction: Section 11.1
 - Right to Information: Governance Reforms Agenda
- 2) Your answer should include the following points :
 - Some points from the Introduction (Section 11.1) as background
 - The points of importance given in Section 11.3
- 3) Your answer should include the following points :
 - A brief write up on the need for Right to Information from 11.1 and 11.2
 - The points highlighted for the benefits of the common man in Section 11.3

Check Your Progress Exercise 2

- 1) Your answer should include the following points :
 - Refer Section 11.4
- 2) Your answer should include the following points :
 - Refer Section 11.5 and 11.6

UNIT 12 JUDGMENTS OF THE SUPREME COURT AND HIGH COURTS: INSTRUMENT FOR FACILITATING RTI ENFORCEMENT*

Structure

12.0 Objectives

12.1 Introduction

12.2 Right to Information under the Indian Constitution: Judicial Interpretation

12.3 The RTI Act: Interpretation of various Provisions by the Supreme Court

12.4 The RTI: Important Decisions of the High Courts

12.5 Conclusion

12.6 Glossary

12.7 References

12.8 Answers to Check Your Progress Exercises

12.0 OBJECTIVES

After studying this Unit, you should be able to:

- Describe the important decisions relating to the RTI; and
- Analyse the interpretation given to various provisions of the RTI Act by judiciary.

12.1 INTRODUCTION

The Constitution of India does not expressly provide for any right to freedom of information as such. Part III dealing with Fundamental Rights and Part IV dealing with Directive Principles of State Policy are totally silent on this subject. However, Article 19(1)(a) of the Constitution, which confers the right to freedom of speech and expression, includes the right to information. It comprehends right to know, right to receive information regarding matters of

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

public concern. This right also emanates from the Preamble to our Constitution, which secures to all its citizens liberty of thought and expression.

These constitutional provisions securing the right of information to the citizens have received an expansive treatment by the Supreme Court of India. The Indian apex court through its progressive interpretation read this valuable right as a part of Article 19(1)(a). It has observed that the right to know is implicit in right to free speech and expression. Disclosure of information regarding functioning of the government must be the rule.

The Unit highlights the Judgements of the Supreme Court and High Courts, which proved as an effective instrument for facilitating the RTI enforcement. In this regard, this Unit focuses on important decisions relating to the RTI and analysis of the interpretation given to various provisions of the RTI Act by the Judiciary.

This Unit also contains success stories, which motivate the stakeholders and citizens to make efforts to realise the transparency and accountability in the government functioning

12.2 RIGHT TO INFORMATION UNDER THE INDIAN CONSTITUTION: JUDICIAL INTERPRETATION

In the case of *State of U.P. vs. Raj Narain* (1975) 4 SCC 428, 453, Mathew, J. expressed this proposition in the following words:

“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 way, when secrecy is claimed for transactions which can, at any rate, *have no repercussion on public security.* To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.”

The Supreme Court in *S.P. Gupta vs. Union of India* (1981 Supp SCC 87), decided by seven-judge bench, added a fresh, liberal dimension to the need for disclosure in matters relating to public affairs. In the instant case it was

held that *in regard to the functioning of Government, disclosure of information must be ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest.* It was further held that the disclosure of documents relating to the affairs of the State involves two competing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the state of protecting the information relating to its crucial affairs. In addition, it was also held that in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make his/her final decision depending upon the particular facts involved in each individual case. It is important to note that it was conceded that there are certain classes of documents, which are necessarily required to be protected such as Cabinet Minutes, documents concerning the national safety, documents, which affect diplomatic relations or relate to state secrets of the highest importance and the like in respect of which court would ordinarily uphold government's claim of privilege. However, even these documents have to be tested against the basic guiding principle, which is that *wherever it is clearly contrary to the public interest for a document to be disclosed, then it is in law immune from disclosure.*

In *Dinesh Trivedi vs. Union of India* ((1997) 4 SCC 306), the Supreme Court while making a reference to *State of U.P. vs. Raj Narain* and *S.P. Gupta vs. Union of India* held: "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. Implicit in this assertion is the proposition that in transactions which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated". Further, it added, "To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers in Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations

almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.”

In *People’s Union for Civil Liberties v. Union of India* ((2004) 2 SCC 476), the Supreme Court held that right of information is a facet of the freedom of “speech and expression” as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions.

Check Your Progress 1

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

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

- 1) Discuss the judicial interpretation of the RTI under the Indian Constitution on the basis of a case of the State of UP vs. Raj Narain.

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- 2) Analyse the judicial interpretation of Right to Information under the Indian Constitution.

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12.3 THE RTI ACT: INTERPRETATION OF VARIOUS PROVISIONS BY THE SUPREME COURT

Under the Act, Section 23 excludes the jurisdiction of courts in the cases pertaining to the RTI. This Section makes it clear that no court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act. It means that there is no provision for the right to appeal against the decision of the Information Commission. However, the Courts have been entertaining appeals against the decisions of Information Commissions under Articles 226/227 and 32 of the Indian Constitution. The

citizen has a right to approach the High Court under Article 226 or where it refers to a fundamental right, s/he may even approach the Supreme Court under Article 32 of the Constitution of India. In exercise of the writ jurisdiction, Hon'ble High Courts and Supreme Court have given a number of judgments on various aspects of the RTI Act, 2005. Some of these are highlighted in this section.

i) Section 8(1)(e): Information available in Fiduciary Relationship

Examinee's right to inspect his evaluated answer books in a public examination or taking certified copies thereof under the RTI Act. In CBSE and Anr. Vs Aditya Bandopadhyay ((2011) 8 SCC 497), the Supreme Court on the question whether the examinee is entitled to inspect his evaluated answer books or take certified copies thereof held that the answer-book is evaluated by an examiner appointed by the examining body, the evaluated answer book becomes a record containing the "opinion" of the examiner. Therefore, the evaluated answer book is also an "information" under the RTI Act.

The words "information available to a person in his fiduciary relationship" are used in Section 8(1)(e) of the RTI Act refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary – a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically-infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a shareholder, an executor with reference to a legatee, a receiver with reference to the parties to a list, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. That kind of fiduciary relationship does not exist between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body. It cannot, therefore, be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer books are evaluated by the examining body.

Even assuming that it is in a fiduciary relationship with the examinee, Section 8(1)(e) of the RTI Act provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen *information available to a person in his fiduciary relationship*. This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in

fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself. When an examinee is permitted to examine an answer book or obtain a certified copy, the examining body is not really giving him some information, which is held by it in trust or confidence, but is only giving him an opportunity to read what he had written at the time of examination or to have a copy of his answers. Therefore, in furnishing the copy of an answer book, there is no question of breach of confidentiality, privacy, secrecy or trust.

RBI can't Deny Information under RTI claiming Fiduciary Relationship

Reserve Bank of India v. JayantilalMistry (2016) 3 SCC 525

The main issue that arose for consideration in the case was whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other. The Supreme Court held that the RBI does not place itself in a fiduciary relationship with the financial institutions because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. The RBI is supposed to uphold public interest and not the interest of individual banks. Hence, the RBI is clearly not in any fiduciary relationship with any bank. The main characteristic of a fiduciary relationship is "Trust and Confidence", something that RBI and the Banks lack between them. The RBI has no legal duty to maximise the benefit of any public sector or private sector bank, and thus there is no relationship of "trust" between them. However, the RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. Thus, RBI ought to act with transparency and duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein.

- ii) Information including commercial confidence, trade secrets or intellectual property- the disclosure of which would harm the competitive position of a third party**

The Institute of Chartered Accountants of India vs Shaunak H. Satya & Ors ((2011) 8 SCC 781).

In the present case, the Supreme Court held that the appellant is entitled to claim a copyright in regard to the question papers, solutions/model answers, instructions relating to evaluation as the said materials

constitute intellectual property of the appellant. However, the exemption under Section 8(1)(d) will not be available if the information is merely an intellectual property. The exemption under this section is available only in regard to such intellectual property, the disclosure of which would harm the competitive position of any third party. The appellant has not been able to demonstrate that the disclosure of the said intellectual property (instructions and solutions/model answers) would harm the competitive position of any third party.

Information can be sought under the RTI Act at different stages or different points of time. What is exempted from disclosure at one point of time may cease to be exempted at a later point of time, depending upon the nature of exemption. Similarly, if information relating to the intellectual property, that is, the question papers, solutions/model answers and instructions, in regard to any particular examination conducted by the appellant cannot be disclosed before the examination is held, as it would harm the competitive position of innumerable third parties who are taking the said examination. But the position will be different once the examination is held. Disclosure of the question papers, model answers and instructions in regard to any particular examination, would not harm the competitive position of any third party once the examination is held.

An application for information would be rejected under Section 9 of RTI Act, only if information sought involves an infringement of copyright subsisting in a *person other than the State*. The ICAI being a statutory body created by the Chartered Accountants Act, 1948 is “State”. The information sought is a material in which the ICAI claims a copyright. Providing access to information in respect of which the ICAI holds a copyright, does not involve infringement of a copyright subsisting in a *person other than the State*. Therefore, the ICAI is not entitled to claim protection against disclosure under Section 9 of the RTI Act.

iii) Whether a Co-operative society will fall within the definition of “Public Authority”

Thalappalam Service Coop. Bank Ltd. vs State of Kerala (2013) 16 SCC 82

Concerned with the question whether a co-operative society registered under the Kerala Co-operative Societies Act, 1969 will fall within the definition of “public authority” under Section 2(h) of the Right to Information Act, 2005 and be bound by the obligations to provide information sought for by a citizen under the RTI Act, the Supreme Court held that Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 does not fall within the definition of

“public authority” as they are not owned, controlled or substantially financed by the appropriate Government.

A body, institution or an organisation, which is neither a State within the meaning of Article 12 of the Constitution or its instrumentalities, may still answer the definition of public authority under Section 2(h)(d) (i) or (ii). The Court held that the expression “controlled” which figures in between the words “body owned” and “substantially financed”, means control by the appropriate government must be a control of a substantial nature and not mere “supervision” or “regulation”. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. The word “controlled” used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-à-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree, which amounts to substantial control over the management and affairs of the body. Legislature has used the expression “substantially financed” in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable, etc. Merely providing subsidiaries, grants, exemptions, privileges, etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body, which practically runs by such funding and but for such funding, it would struggle to exist. Now, the question, whether an NGO has been substantially financed or not by the appropriate Government, may be a question of fact, to be examined by the authorities concerned under the RTI Act.

- iv) **The RTI Act does not have the effect of either abrogating or repealing all other enactments – overriding effect of RTI Act is only to the extent of inconsistency**

P.C. Wadhwa Vs Central Information Commission, SC

The petitioner had moved an application under the Right to Information Act, 2005 to Registrar General, Census Operations seeking information regarding certain leaders of the nation in public interest. The same was rejected holding that for preparing census, facts are collected from individuals in a household, which are confidential in nature and used only for statistical purposes. The question which arose was whether the explicit provisions of the Census Act, 1948 stand abrogated by the overriding effect given to the RTI Act of 2005.

The Supreme Court held that the RTI Act does not have the effect of either abrogating or repealing all other enactments dealing with

furnishing of information to an information seeker. The overriding effect of the RTI Act is only to the extent of inconsistency. The provisions of Section 15 of the Census Act, 1948 are not inconsistent with provisions of Section 8(1)(j) of the Right to Information Act, 2005 and both can be read harmoniously. Accordingly, Section 22 of the Right to Information Act, 2005 will not come into operation and cannot sustain the pleas of the appellant. Furthermore, it is apparent that the appellant wants to elicit information about the religion of such public persons. India being a socialist, democratic and secular democratic Republic, the quest to obtain the information about the religion professed or not professed by a citizen cannot be in any event, be considered to be in public interest, and hence, such information is strictly confidential as per Section 15 of the Census Act, 1948. Mere terming of the members of the 'family' in respect of which the information is sought as public figures and the leaders of nation cannot change the statutory impact of the above provisions. It is, thus, evident that the petitioner is making efforts to make unjustified inroads into the privacy of the said individuals even if they are public figures. Consequently, the information supplied to the Census Officer cannot be made public in view of the statutory bar imposed by Section 15 of the Census Act, which is not inconsistent with Section 22 read with Section 8(1)(j) of the Right to Information Act, 2005.

v) **Litigant cannot seek information as to why and for what reasons the Judge had come to a particular decision or conclusion**

Khanapuram Gandaiah vs Administrative Officer & Ors (2010) 2 SCC 1
In the present case the Supreme Court held that of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed, especially in matters pertaining to judicial decisions. A Judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a Judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the Judge had come to a particular decision or conclusion. A Judge is not bound to explain later on for what reasons he had come to such a conclusion.

Under Section 6 of the RTI Act, an applicant is entitled to get only such information, which can be accessed by the "public authority" under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information as a Judge cannot be

expected to give reasons other than those that have been enumerated in the judgment or order.

vi) Performance of an employee/officer in an organisation falls under the expression “personal information”

GirishRamchandra Deshpande v. Central Information Commr., (2013) 1 SCC 212

The question whether the Central Information Commissioner (CIC) acting under the RTI Act was right in denying information regarding the third respondent’s personal matters pertaining to his service career and also denying the details of his assets and liabilities, movable and immovable properties on the ground that the information sought for was qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules, which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest.

vii) Marks awarded to candidates in Civil Service Examinations cannot be disclosed under the RTI

Union Public Service Commission etc. v. Angesh Kumar &ors. (2018) 4 SCC 530

Unsuccessful candidates in the Civil Services (Preliminary) Examination, 2010 approached the High Court for a direction to the UPSC to disclose the details of marks (raw and scaled) awarded to them in the Civil Services (Prelim.) Examination, 2010. The Supreme Court, in the case, observed that:

- weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, information sought with regard to marks in Civil Services Examination cannot be directed to be furnished mechanically;
- furnishing raw marks will cause problems, which would not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to do so in a given fact and situation; and
- if rules or practice so require, certainly such rule or practice can be enforced.

viii) Nature and Function of the Information Commissions

In **Namit Sharma v. Union of India**, the Supreme Court held that the Information Commission “is a judicial tribunal having the essential trappings of a Court” and disclosure of information may “involve the question of prejudice to a third party”. As such, the Court “read into” the Act a “judicial mind” requirement. To be appointed to the Information Commissions, an individual must “possess judicial acumen and experience” requisite “to fairly and effectively deal with the intricate questions of law that would come up for determination before the Information Commission”.

Against the decision, the government filed a review petition with the Supreme Court contesting several parts of the decision. The question before the Court was whether its previous reading into the Right to Information Act of a judicial experience requirement constituted “an error apparent on the face of the record”. The Court held that the specific powers and functions possessed by the Information Commissioners pursuant to Sections 18, 19, and 20 of the Act were not so much judicial functions as administrative ones. Specifically, in deciding “whether a citizen should or should not get a particular information which is held by or under the control of any public authority,” the Information Commission does not perform the judicial function of “deciding a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority”. The Court clarified that, in carrying out its administrative functions, the Information Commission must act in a fair and just manner following the procedure laid down in the Act. However, the Court rejected the notion that acting in such a manner requires judicial experience, training, and acumen. With respect to the argument about third party rights, the Court found that the work of the Information Commission does not involve deciding the rights of a third party but rather “whether the information which is held by or under the control of a public authority in relation to or supplied by that third party could be furnished to a citizen under the provisions of the Act”.

12.4 THE RTI: IMPORTANT DECISIONS OF THE HIGH COURTS

- i) RTI cannot be denied on the ground that Information sought is Irrelevant

Adesh Kumar v. Union of India 2014 SCC Online Del 7203

A FIR was lodged against the Petitioner during his tenure of service and subsequently, a charge sheet against the Petitioner was submitted. On receipt of charge sheet, the Petitioner applied for information under the

RTI Act pertaining to sanction of prosecution against him. In the case, the Petitioner was aggrieved by denial of information under the RTI Act by the concerned Public Information Officer.

The Delhi High Court while dismissing the Petitioner's plea stated that impugned provision prohibits furnishing of information, which would impede the process of investigation or apprehension or prosecution of offenders. However, the Court held that merely citing that the information is exempted under Section 8(1)(h), of the RTI Act would not absolve the public authority from discharging its onus as required to claim such exemption. According to Section 8(1) (h) information, which would impede the process of investigation or apprehension or prosecution of offenders could be denied. In order to deny information, the public authority must form an affirmative opinion that the disclosure of information would impede investigation, apprehension or prosecution of offenders; a mere perception or an assumption that disclosure of information may impede prosecution of offenders is not sufficient. In the present case, neither the FAA nor the CIC has considered as to how the information as sought for would impede the process of investigation or apprehension or prosecution of the petitioner and other accused. Neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution.

The question whether the information sought by the petitioner is relevant or necessary, is not germane in the context of the Act. A citizen has a right to information by virtue of Section 3 of the Act and the same is not conditional on the information being relevant. Secondly, the fact that the petitioner has access to the material relied upon by the prosecution does not prevent him from seeking information, which he considers necessary for his defence.

- ii) Whether Particulars of FIR can be disclosed under the RTI Act?

JijuLukose v. State of Kerala 2015 SCC OnLine Ker 26286

In the case, Public Interest Litigation (PIL) was filed seeking a direction to upload the copy of the FIR on the website of the police station and to make available copies of the FIR to the accused immediately on registration of the FIR. The Petitioner had alleged that inspite of the FIR being registered, the petitioner received its copy only after 2 months. One of the issues, which arose was whether copy of the FIR registered in a police station can be obtained under the Right to Information Act, 2005. The High Court held that in most of the instances, First Information is inextricably linked to the process of investigation or apprehension or prosecution of offences. In such cases, such information need not be disclosed to the public as it is exempted under Section 8(1)(h) of the Right to Information Act, 2005. But it can be claimed by

the informant and the accused as per legal provisions under the Code of Criminal Procedure, 1973 as a matter of legal right.

However, whether in particular application, police authorities are claiming exemption under Section 8(1) of the RTI Act is a question, which has to be determined by the police authorities by taking appropriate decision by the competent authority. In this case, no such decision is taken to claim exemption under Section 8 of the RTI Act, and as such the police authorities are obliged to provide for copy of the FIR on an application under the RTI Act.

- iii) The Delhi High Court Rejects the CIC Order Holding Ministers as Public Authorities under the RTI Act

Union of India and Anr. v. Central Information Commission and Anr. W.P. (C) 5636/2016 in HC of Delhi decided on Nov. 23, 2017

In the case of CIC's order whereby the CIC had declared, "the Ministers in the Union Government and all State Governments as "public authorities" under Section 2(h) of the Right to Information Act, 2005 was challenged. In this case, an application was filed before the Additional Private Secretary, Minister of Law and Justice, Government of India seeking the following information: "*Time period of Hon'ble Minister or Minister of State's meeting the General Public has not been issued by the Ministry. If issued, its details and time to provide in Hindi and English language.*"

Since the information was not received, an appeal was filed. Thereafter, the Central Public Information Officer (CPIO) sent a response informing respondent no.2, "No specific time has been given for the meeting of General Public with the Hon'ble Minister. However, as and when requests are received, appointments are given subject to the convenience of the Hon'ble Minister". A second appeal was filed stating that the information sought for had not been received within the specified time and action be taken against the concerned CPIO. The issue in appeal for the CIC's consideration was: Is Minister or his office a "public authority" under the RTI Act? and Whether a citizen has the right to information sought, and does the Minister has corresponding obligation to give?

The CIC held that the Ministers in the Union Government and/or State Governments are "public authorities" within the meaning of Section 2(h) of the Act. The CIC also issued several directions to the Central or State Governments to provide necessary support to each Minister including designating officers as Public Information Officers and First Appellate Authorities, by providing official website for suo motu disclosure of information and periodical updating of such information.

The Delhi High Court, setting aside the CIC's order, opined that the directions issued by the CIC in this case was beyond its scope and in the facts and circumstances of the case, there was no occasion for the CIC to enter upon the question as to whether a Minister is a "public authority" under Section 2(h) of the Act.

iv) Denial of information on the ground that record not traceable

Union of India vs. VishwasBhamburkar W.P.(C) 3660/2012 in the High Court of Delhi Decided on 13.09.2013

In this case, the Delhi High Court regarding the plea of the authority of record being not traceable observed that the RTI Act is a progressive legislation aimed at providing the citizens, access to the information which before the said Act came into force could not be claimed as a matter of right. It also opined that even in the case where it was found that the desired information though available in the record of the government at some point of time, could not be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/officials responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/office, to deny the information, which otherwise is not exempted from disclosure, wherever said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act, 2005.

Check Your Progress 2

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

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

1) Discuss the impact of Section 23, which excludes the jurisdiction of courts in the cases pertaining to the RTI.

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2) Whether a cooperative society falls within the definition of "Public Authority"?

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- 3) Describe the important decisions of the High Court on the RTI by highlighting the case of Adesh Kumar v. Union of India 2014.

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12.5 CONCLUSION

The Right to Information Act, 2005 is an exceptional piece of legislation, which has ushered in a transparency revolution in the country. This movement has been further strengthened by the courts across the country, through their judgments. The Courts have been key contributors in bringing about transparency and accountability in the working of public institutions.

12.6 GLOSSARY

Intellectual Property: It refers to the creations or inventions of the mind like inventions, literary and artistic works, design, names and images that are used in commerce. In this regard, the Intellectual Property Right (IPR) is just like a legal right. The effective implementation of the policy in India will prove a giant leap to spur creativity and stimulate innovation. The Department of Industrial Policy and Promotion is the nodal Department for nurturing the IPR.

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**Judgments of the
Supreme Court and
High Courts:
Instrument for
Facilitating RTI
Enforcement**

12.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Refer the case of State UP v. Raj Narain (1975) in Section 12.2
- 2) Your answer should include the following points:
 - Refer Section 12.2

Check Your Progress 2

- 1) Your answer should include the following points:
 - Refer Section 12.3
- 2) Your answer should include the following points:
 - Refer Section 12.3 (iii)
- 3) Your answer should include the following points:
 - Refer Section 12.4 (i)

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THE PEOPLE'S
UNIVERSITY

UNIT 13 GOOD PRACTICES AND SUCCESS: EFFORTS TO REALISE TRANSPARENCY AND ACCOUNTABILITY*

Structure

- 13.0 Objectives
- 13.1 Introduction
- 13.2 Use of Information and Communication Technologies to strengthen the RTI
- 13.3 Proactive Disclosure of Information
- 13.4 Effective use of the RTI Act: Access of Marginalised Population to specific Government Schemes
- 13.5 Initiatives for generating Public Awareness
- 13.6 Conclusion
- 13.7 Glossary
- 13.8 References
- 13.9 Answers to Check Your Progress Exercises

13.0 OBJECTIVES

After studying this Unit, you should be able to:

- Highlight the efforts by various agencies to realise the RTI and bring transparency and accountability; and
- Analyse the benefits and outcome of implementation of these good practices.

13.1 INTRODUCTION

Good Governance constitutes the cornerstone of every democracy. The need of good governance and necessity for state machinery to work for the welfare of the people has been universally accepted. The good governance is characterised by transparency, accountability and responsiveness. Vital linkage exists between the right to information and good governance. The Right to Information is increasingly being recognised as an important

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

mechanism to promote openness, transparency and accountability in the government administration.

The RTI is a fundamental human right and the launching point for realisation of other civil, political, economic, social and cultural rights. Access to information, not only promotes openness, transparency and accountability in administration, but also facilitates active participation of people in the democratic governance process. The Right to Information Act, 2005 has made the governance processes of the country accessible to its citizens and has taken democracy to the grassroots level. It has contributed to the ability of citizens to become aware and remain involved in the activities of government to ensure participatory governance. It has raised the level of political debate and led to a more productive process of policy-making. The RTI Act has ushered an era of transparency and accountability. In the sphere of public administration, transparency improves the decision-making ability of public servants by making them more responsive and accountable to the public. It also controls corruption and improves the legitimacy and trust in government, in the eyes of the people.

To operationalise and implement the RTI Act, the governments, both at the Centre and State levels, have major role to play. They have responsibility to develop educational programmes for the public especially disadvantaged communities on the RTI; ensure proactive disclosure of information through various means including internet, promote timely dissemination of accurate information to the public, etc. This Unit compiles the good practices in India, at Central and State levels relating to some key issues under the RTI Act. The Unit will highlight efforts in the form of some of the good practices being successfully adopted by various agencies for implementation of the RTI Act. It will also bring forth the benefits, outcome and lessons learnt by the concerned public authorities during implementation of the good practices.

The Unit will highlight some good practices, which are related to the RTI; and successfully implemented at various levels with major focus on the following key aspects:

- a) Use of Information and Communication Technologies (ICTs) to strengthen the implementation of the RTI Act;
- b) Effective use of the RTI Act to improve access of marginalised population to specific government schemes - specifically MGNREGS and PDS;
- c) Implementation of suo motu provisions of the RTI Act; and
- d) Other good practices, including awareness generation.

13.2 USE OF INFORMATION AND COMMUNICATION TECHNOLOGIES TO STRENGTHEN THE RTI

In this section, we will discuss the use of ICT to strengthen the RTI on the basis of successful practices in various departments and states.

i) **DoPT- RTI Online**

To facilitate citizens in filing the RTI applications; and public authorities in managing and monitoring, the Department of Personnel & Training (DoPT), Government of India introduced RTI Online (<https://rtionline.gov.in>). The portal has two interfaces viz., Citizen Interface and Public Authority (PA) Interface. Using the portal, the citizen is able to seek information online from public authorities and also files first appeal. The Citizen can even make payments online towards the RTI fee and additional fee, if any. The applicant can even track the status of his/her application/first appeal by using the registration number. The portal provides email and SMS alert at various stages of the processing of the RTI request/first appeal to the citizen. The Public Authority interface enables the various functionaries of the Central Government and Public Authorities to manage and monitor the RTI requests and first appeals and thus, providing necessary information in a time bound manner.

ii) **Central Monitoring Mechanism in Odisha**

RTI Central Monitoring Mechanism operational in Odisha is a web based centralised system, developed by the Information and Public Relations Department, Government of Odisha to monitor the process of implementation of the Right to Information Act, 2005. This is a Government to Citizen (G2C) as well as Government to Government (G2G) service web portal with auto RTI compliant features for all the stakeholders of the RTI. The system provides IT based solutions to all the Government Departments to manage their proactive disclosure under Section 4. They can process and deal with the RTI applications of citizens and also generate electronic annual reports. This ICT tool provides citizens, the facility of filing RTI applications online and easily tracking the status of these applications at any point of time. This system can even be accessed in rural areas through Common Service Centers and any internet outlet.

iii) **"JAANKARI"-A Facilitation Centre**

Bihar is the first state in the country, which launched a helpline in January 2009, where people can file complaints against the government officials who harassed them for seeking information by using the RTI

tool. The Facilitation Centre called "JAANKARI" is an innovative and effective use of the ICT for expanding the base of the RTI. This is a unique experiment, first of its kind in India, which aimed at "information empowerment" of the people. To overcome the issues of digital divide and illiteracy, the Government of Bihar has used voice communication over phone line. Ease of Communication is the key to this project's success. This innovative use of the RTI Act promotes e-governance by disseminating useful information among the masses, especially the disadvantaged sections. There are two numbers -one is RTI Helpline Number (RHN) and the other number is RTI Application Number (RAN-155311). The RHN(155310) is an ordinary number with hunting line facility with normal call charges. If any citizen wants to get any help about how to use the RTI, s/he can use the RTI Application Number. In case a person wants to seek information, the other number is available. The system enables the citizen to file an application for seeking any information under the RTI Act, without any hassles of approaching the PIO of the concerned department or purchasing postal order for the requisite RTI application. The primary and mandatory requirement of submitting the RTI application fee could be fulfilled by paying at a premium rate to the service provider BSNL.

This ICT initiative has led to empowerment of common man. It has also created peer pressure and enabling environment for the government's delivery system. The citizen with ease, sitting at home, can get the information in the language s/he understands. The power of information is now just a phone call away. This initiative has no doubt helped in introducing transparency in functions of the government. Besides this, it has also indicated areas of improvement as well as sectors demanding state intervention.

iv) **Dial.Gov - An interface to access information on Welfare Schemes**

The Government with an aim of welfare of the citizens, every year launches various projects in several domains at the Central and State Levels. India's large population base with complex heterogeneity makes the implementation and delivery of welfare programmes as one of the most difficult tasks for the government. Spreading awareness about these government programmes is also a herculean task that requires huge amount of investments. Dial.gov is a unique single gateway through which the different schemes and programmes of the government are matched with the targeted beneficiaries scattered under different demographics. The Government's attempt is to make special efforts to reach the marginalised sections of the society to bring them into the mainstream by providing targeted benefits through focused schemes and programmes. To provide a single window access to the information

about the services being provided by the Government to its citizens and other stakeholders, a portal Dial.gov Service has been developed. Dial.gov Service is a common man's interface for information on the Government welfare schemes and benefits. The aim is to bridge the existing gap between the beneficial information and the beneficiary. The portal is a comprehensive, accurate, reliable and one stop source of information. It has been developed as a solution where a user can find useful information regarding any service, scheme or benefit.

v) **E-governance initiatives for RTI at Hamirpur, Himachal Pradesh**

Many states in India are implementing a myriad of e-governance projects aimed at improving public service delivery, bringing greater transparency in government processes and ensuring more effective accountability. Certain initiatives had been undertaken in Hamirpur District of Himachal Pradesh for implementing the RTI through e-Governance. The ultimate aim was to improve the information regime and information retrieval system for easier access to the citizens.

The RTI Centers have been set up at all levels, till villages. These self-contained centers provide information to the citizens about every government activity done through that level. Computerised Display Boards have also been installed, which display the information relating to procedure, formalities, fees, etc. for every public service and governmental activity.

“e-Soochna” kiosks have also been set up at the Sub-divisional levels to provide useful and important information to the citizens through a user-friendly Touch Screen. Up-to-date status of implementation of various development schemes in every panchayat can be accessed through these kiosks. The e-RTI Directory containing details of PIOs, APIOs and appellate authorities, which has been put on website, is also accessible on the e-Soochna kiosks.

The status of RTI cases/ appeals, RTI Directory, RTI Act/Rules, list of PIOs/APIOs/ Appellate authorities and the pro-active disclosure documents have been made available online. Display Boards giving information about the RTI Act and the PIOs, APIOs and Appellate Authorities have been put up in all the Panchayat offices. These initiatives have led to trouble-free access to information to the citizens, and enhanced transparency and efficiency in administration.

Similar kinds of Initiatives have also been initiated in other states, some of which are highlighted below:

vi) **Information Kiosks in Uttar Pradesh**

Lokvani Project

Lokvani is a public-private partnership e-Governance programme, which has been initiated in Sitapur district of Uttar Pradesh. “Lokvani”, means voice of the people in Hindi, is a commitment to the people in providing them with transparent and accountable system of governance. As IT literacy is very low in Sitapur, information kiosks have been started, which form an interface between government and citizens. The model has been replicated in other districts as well.

Nagarik Soochna Kendra in Kanpur Dehat District

A touch-screen Information Kiosk has been set up in Kanpur Dehat district. The kiosk provides information related to various issues and services. Besides, the kiosk also provides print services such as print of pay slips of employees as well as pension slips, print of Block and District maps, etc.

vii) **E-Jan Sampark Project, Chandigarh**

e-JanSampark kiosks have been set up in each sector and each village of Chandigarh to enable residents to access information and avail services with ease. The project especially helps those who are without IT connectivity. It provides a single, efficient information dissemination system to the citizens for availing of the government services.

viii) **Myneta Web Portal- Transparency and Accountability in Electoral Processes**

Association for Democratic Reforms (ADR), a non-partisan, non-governmental organisation, has developed a website www.myneta.info in order to exhibit the information pertaining to candidates’ affidavits on a centralised platform. Herein the citizens can access information easily, free of cost and round the clock. On this website the information about the candidates is housed in a well assorted manner, the election wise and constituency wise. The details of candidates’ along with the digital copies of the original affidavits as well as the digitised searchable data are available. Myneta portal has enabled citizens to make an informed choice while electing their representatives, which is first and foremost strength of democratic process. The portal has enabled proactive disclosure of information relating to the candidates. The easy availability of background information of the candidates has helped in building faith and interest in electoral process.

13.3 PROACTIVE DISCLOSURE OF INFORMATION

The RTI law under Section 4 imposes a duty on the government to routinely and proactively disseminate information of general relevance to the citizens. The mandate is that every Public Authority should provide as much information *suo motu* as possible to the public through various means of communications so that the public takes minimum resort to the use of the Act to obtain information. The spirit of Act lies in proactively disclosing, publishing and disseminating as widely as possible information, which is of general public interest even when a specific RTI request is not filed for the same. In order to reach out to the poor and the illiterate population in the country, the disclosure is required to be made in a manner, which is easily accessible to the public, cost-effective and in local language. However, at present the government is restricted to disclosure primarily through internet.

i) **Writing on the Wall**

Commonwealth Human Rights Initiative (CHRI), a non-governmental organisation along with Nagarik Adhikar Kendra in Gujarat have started the initiative of dispersing information at Panchayat level by doing simple wall painting in local language. To improve the quality of proactive disclosure, the organisation went to the communities to determine the kind of information that would be useful and required by them. The people identified that they needed information on details of the government schemes that the villagers are dependent on. Accordingly, simple templates were developed for disclosing information in the areas of service delivery such as health, education, Public Distribution System and implementation of the rural employment guarantee scheme. This way, the relevant, updated and clear information in local language was made available to the public. The whole exercise was very cost-effective and simple in nature. The walls inside and outside of the Government buildings were used to disclose information through wall painting. The information disclosed through wall painting is regularly replaced by new information. In this regard, the information that has a very short span of life is written in chalk and board and updated regularly. This is an apt example that through simple and practical steps information can be disseminated in the lowest tier of the governance.

ii) **Project SARATHI**

Pimpri Chinchwad Municipal Corporation, Pimpri, Maharashtra has undertaken an initiative “SARATHI” to streamline and systematize the existing process of providing information and registering complaints about the services of Municipal Corporation. Due to tardy process of

information delivery, a lot of time of officers used to have been wasted in giving even basic information to the citizens. Therefore, the need for a mechanism was felt to save precious time of the administration, spent in answering queries and providing the information. An initiative named “SARATHI”, which in Marathi means “one who guides towards the right path” was started.

SARATHI in English has been given an acronym i.e., “System of Assisting Residents and Tourists through Helpline Information”. Through this initiative, information related to basic services offered by the various departments of Municipal Corporation can be easily accessed without having to visit the office in person. Under this project, the descriptive information of the departments was converted in the form of Frequently Asked Questions (FAQs). The practical FAQs on the basic services of Municipal Corporation and important offices of the Central and State Government, included information pertaining to procedure for submitting an application for a service; questions pertaining to availability of prescribed form; documents required to be submitted; place where the application is to be submitted; fees required; normal time taken for the service etc.; sources for additional information; responsibility of grievance redressal; etc. The Frequently Asked Questions were developed for various departments in consultation with the officers of respective departments. To address the needs of different groups of citizens, a multi-pronged approach of delivery viz., through a Book, Website, Mobile application, PDF & e-book, and Helpline (Call Center) was designed. The SARATHI system has been integrated with the existing grievance redressal system. As soon as a complaint is registered at the Call Center, it is marked to the respective officer of the concerned department and a token number is automatically generated, which is sent to the citizen via SMS. Using this token number, the citizen is able to track the process of resolution of the complaint online or can dial the helpline to check its current status.

iii) RTI Library-Pune Municipal Corporation

It was observed by the Pune Municipal Corporation, Maharashtra that most of the RTI Applications filed by people relate to information under Section 4 of the RTI Act, which is required to be disclosed obligatorily by the Public Authority. To deal with the situation, an open library for documents under Section 4 of the RTI Act was set up, so that anybody could walk in and read anything placed in the library. With proper coordination between offices of the civic body, the documents required for the library were identified and procured. The documents kept in the library included information, which is required to be disclosed suo-motu under Section 4. The number of RTI applications received at Municipal

Corporation came down significantly because of the proactive disclosure of information through the RTI library.

iv) **Transparency Desk**

To facilitate Proactive Disclosure of information under the RTI Act, a Transparency Desk was started at the office of the SDM of Dhalai District, Gandacherra in Tripura. Gandacherra being a rural and remote sub-division in Tripura state, people therein do not have easy access to electronic media like internet. Hence, initiative for proactive disclosure through manual system was launched to provide easy access to information and generate awareness. At Sub-Divisional Magistrate office, Gandacherra, “Transparency Desk” was established to provide assistance and help to the people of the sub-division. The Transparency Desk covered all 22 Government departments and every office provided information, which is relevant from the public point of view, based upon most commonly asked information in RTI applications. The information selected and compiled by different offices/ departments are maintained separately in systematic manner for all departments. The registers are also maintained to record details of the RTI applications, date and time of public visit, nature of information required and their feedback. This Desk also gives information to the applicant available both in physical and electronic form. Equipped with computers and internet, the Nodal officer can access the websites of the Ministry or District Administration, download the required information and provide to the public.

v) **Karnataka: The Bhoomi Project**

One of the major requirements for proactive disclosure of information is maintenance of records systematically, and, as far as possible, computerise these records and connect them through a network all over the country. The Central as well as State Governments have repeatedly expressed their commitment for computerisation and adoption of information technology. Substantial funds have also been allocated under various projects and schemes of the Central and State Governments for this purpose.

The Revenue Department of Karnataka has digitised and made its land records available online. The Bhoomi Project arose out of the need to create a system that would prevent the inaccuracies that marred the manual system of maintaining land records. This is a Central scheme implemented by the state Revenue Department through the Deputy Commissioners of various districts. Under the project, land records are updated and changes are made online. It ensures that when the farmers request a record of rights, tenancy and crops, the information is current. The software incorporates the updating of land ownership details in the business process itself so that there is no lag in the update method. This

system allows officials to add other information to existing information, and monitor all pending work through email. It also provides inbuilt help to recover data from a crashed system. The project has an inherent state of the art security system to protect the system and records from any sort of manipulation.

Check Your Progress 1

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

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

1) Highlight the key aspects for effective implementation of the RTI Act.

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2) Discuss the use of ICTs in strengthening the RTI on the basis any four good practices in various departments and states.

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3) Explain the significance of “Writing on the Wall” in proactive disclosure.

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**13.4 EFFECTIVE USE OF THE RTI ACT:
ACCESS OF MARGINALISED
POPULATION TO SPECIFIC
GOVERNMENT SCHEMES**

ICT Ecosystem for MGNREGA in Rajasthan

One World Foundation India with the Ministry of Rural Development (MoRD), Government of India, Government of Rajasthan and the United

Nations Development Programme (UNDP), have very effectively utilised ICT tools to enable efficient implementation of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) in Rajasthan. The ICT Ecosystem for MGNREGA aimed at using the power of the internet and related communication technologies for creating a transparent and accountable mechanism for the implementation of MGNREGA. The project aimed at enabling the poor, especially women, to access information, demand their rights-based entitlements and ensuring effective devolution of the government responsibilities provided under the Act.

The front end technology comprised of the Information Kiosk and the Unified Handheld Device. Under the project, Soochna Seva Kendra (Information Kiosks) equipped with an advanced ICT enabled apparatus were established to provide information and assistance to workers on various provisions of the MGNREGA; and their entitlements. Keeping in view the low levels of literacy of the workers, Text-to-speech enabled touch screen application was installed. The use of local language and user-friendly icons has eased information delivery to target the users who have low literacy levels. Biometric enabled and GPS verified attendance tracking tool – also known as Unified Handheld Device (UHD) has also been added to the programme. This was introduced to digitally generate the worksite muster rolls. Earlier, the workers had to depend on the information provided by the gram panchayat functionaries who acted as middlemen and corruption crept in. The Information Kiosks by providing information directly to workers have played an important role in eliminating the dependence of workers on the gram panchayat functionaries.

13.5 INITIATIVES FOR GENERATING PUBLIC AWARENESS

i) RTI on Wheels

To enhance participation of people in the democratic process through the RTI, it is utmost necessary that this awareness about the Act reaches the marginalised communities. For educating citizenry about the RTI, JANPATH, Mahiti Adhikar Gujarat Pahel (MAGP) and Association for India's Development (AID) have started joint initiative "RTI on Wheels". The RTI on Wheels is multimedia vehicle, that is, used to conduct Outreach Programmes for awareness generation and mobilisation. Such programmes are conducted at various locations like bus stand, Civil Hospitals, government offices, folk fairs, etc. at suitable time where maximum people can be contacted in minimum time. During the span of 30-40 minutes, RTI song, RTI success stories are screened using multimedia. RTI publicity materials like pamphlets, books, user manuals, sample applications, etc. are also displayed and screened.

Experts also address the gathering to educate the masses about the provisions of the RTI Act. Many public authorities also invite “RTI on Wheels” to generate awareness as it has been found to be very effective media for disseminating vital information.

The “RTI on Wheels” model has been replicated in various other states. The Meghalaya Government has developed three RTI on Wheels for conducting RTI awareness programmes to reach out to Naga, Garo and Khasi tribes. The Gujarat Government has purchased two vehicles to develop RTI on Wheels. The RTI on Wheels is a good medium to generate awareness in RTI issues among the masses especially the disadvantaged and marginalised sections of the society.

ii) **Jan Sunwai & Social Audit**

To ensure accountability and transparency in government functioning, one of the basic requirements is that people should be consulted and their feedback sought on a continual basis. The citizen needs to be legally empowered to ask questions, file complaints, and be a part of the corrective process.

A number of NGOs in various states are organizing Jan Sunwai and RTI camps, spreading awareness about the RTI Act throughout the state with particular emphasis on disadvantaged group. The basic objective of public meetings is to motivate people to use the RTI Act as a weapon for realising their rights, and ensuring implementation of the RTI Act in letter and spirit. The Public Hearing (Jan Sunwai) is one of the most powerful public tools to demand accountability from local government units. Public Hearing or Jan sunvai is open-air hearing where official records of state development projects are exposed to the scrutiny of the intended beneficiaries. There are number of NGOs and civil society organisations in various states, which are engaged in organising public hearings on the RTI and generating awareness. In Rajasthan, Mazdoor Kisan Shakti Sangathan (MKSS) is an example of transparent organisation, which triggered the conceptualisation of Jan Sunwai by building the grassroots movement for transparency of government functioning and people’s Right to Information.

In Delhi, NGOs like Parivartan and National Campaign for People’s Right to Information (NCPRI) are organising such public hearings. Residents of resettlement colonies, concerned officials, NGO activists and media were present to attend the Jan Sunwai. A panel of eminent citizens are invited to preside over the proceedings, which generally include retired Judges, community leaders, NGO activists, Journalists, Representatives from the Government of India, etc. This panel seeks modes of accountability to resolve some of the problems to be thrown up during the public hearing.

The significance of RTI can be observed in Social audit also. It is a process wherein a systemic demand of information by the community is raised in response to the works/programmes that have already been implemented by the government or other agencies for that particular area/community. In this process, both people and the Government jointly monitor the project scheme. The objective of the process is full access to information. The process of social audit has evolved in India, which can potentially become a powerful democratic tool to ensure transparency and accountability to the people. The MKSS, in mid-1990s began experimenting with it and organised village-based public hearings on development expenditure. Their efforts helped in establishing the Right to Information as a potent tool for people's issues.

The RTI Act has given citizens' access to the government records, which is the precondition for social audits. The social audit process is conceptually simple. Information is to be proactively shared amongst people to enable them to do "performance audit" of a service or programme. The audit covers all stages of performance- from planning to implementation and evaluation. The Mahatma Gandhi National Rural Employment Guarantee Act was the first law to mandate social audit as a statutory requirement. A number of states have made significant progress in conducting the social audits. In this regard, we will discuss, in detail, in Unit 14 of this course. Andhra Pradesh has institutionalised social audits, which has yielded positive outcome. There have been innovative efforts in States like Sikkim, Tamil Nadu and Jharkhand. In 2017, Meghalaya became the first State to roll out a social audit law to cover all departments.

Usually, photocopies of the records of works of the concerned department are obtained by using the RTI Act and this information is disseminated amongst the residents of the locality to begin the process of verification of works. Then the residents of the locality are invited to voice their comments related to verification of actual work done. This helps in the evaluation of work done on the spot. The Jan Sunwai has demonstrated the proportion of embezzlement and urgency with which the issue needs to be tackled. It has clearly established that most of the time, it is not the inadequacy of funds but leakage and corruption, which are responsible for poor development. The Jan Sunwai has made it possible to hold the government accountable in full public glare. Due to efforts of the RTI campaign and local organisations, public hearings of this kind have been held in rural areas in several states on a range of subjects including human rights, democratic rights, environmental concerns and issues of governance.

Check Your Progress 2

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

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

- 1) Describe the use of RTI Act in improving the access of marginalised population to government schemes on the basis of a suitable example.

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- 2) “Non-Governmental Organisations have contributed effectively in generating public awareness about RTI”. Comment.

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- 3) Discuss the role of Jan Sunwai and Social Audit in generating public awareness about their rights and the RTI.

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13.6 CONCLUSION

Since the RTI Act was enacted in 2005, attempts have been made at the Central and State levels to implement the Act in letter and spirit. Both the central and the state governments have undertaken many innovative measures, some of which have been discussed in this Unit. These initiatives provide a set of general principles, which need to be adopted more rigorously to make RTI a reality. First and foremost there is need to ensure ease of obtaining information, which is cost effective as well. Any measure that significantly lowers the transaction costs of seeking information by the citizens goes a long way in making RTI an achievable reality. The setting up

of Information Kiosks, RTI Helplines, Call Centres using ICT technologies places the least demand on the citizens in terms of costs related to time, physical movement, and information costs. Similarly, a mobile centre, which reaches the doorsteps of villagers, especially in remote and difficult areas like those in the North-Eastern regions, provides similar advantages to citizens.

Secondly, the type of information and the manner in which it is made available are important to the citizens. People are interested in matters, which affect them directly like MGNREGA, PDS, land rights, amount of taxes to be paid and the status of their complaints. Systems, which allow citizens to individually access the relevant information, which is placed by public authorities in the public domain are extremely useful. Other types of proactive disclosures, which are required relate to information which may be needed by the citizens for interfacing with the government. This would include step by step directions for the process to be followed, names and contact numbers of the concerned officials, required forms, and so on. This information is not person specific, but is being asked a number of times through the RTI applications. This raises the need that it should be put in the public domain by authorities, municipalities, and government at all levels by adopting innovative ways to achieve this. Further, efforts are required to present this information in citizen friendly and simple manner. The same should be regularly updated. Therefore, the information which is presented in form of FAQs and transmitted in local and simple language makes comprehending the same easier for people. Finally, since constant vigilance is the price for freedom, the role of NGOs, the media, the courts and civil society are critical. India is fortunate to have a very active and vigilant civil society movement, and the media has not been afraid to highlight deficiencies or deviations from democratic norms. Their role in the spread of awareness has been exemplary.

13.7 GLOSSARY

MGNREGS: It refers to the Mahatma Gandhi National Rural Employment Guarantee Scheme, which is based on the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. It aims at enhancing the livelihood security of people in rural areas by guaranteeing hundred days of wage – employment in a financial year to a household whose adult members volunteer to do unskilled manual work to earn.

PDS: It refers to the Public Distribution System, evolved as a system of management of scarcity through distribution of food grains at the affordable prices in India. It is operated under the joint responsibility of the Central and State/UT Governments.

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13.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Use of ICTs to strengthen the implementation of the RTI Act;
 - Effective use of the RTI Act to improve access of marginalised population to specific government schemes – MGNREGS and PDS;
 - Implementation of suo motu provisions of the RTI Act; and
 - Other good practices, including awareness generation.
- 2) Your answer should include the following points:
 - DoPT – RTI Online.
 - Central Monitoring Mechanism in Odisha.
 - JAANKARI – A facilitation centre.
 - E-governance initiatives for RTI at Hamipur, Himachal Pradesh.
- 3) Your answer should include the following points:
 - Refer Section 13.3(i)

Check Your Progress 2

- 1) Your answer should include the following points:
 - Refer Section 13.4
- 2) Your answer should include the following points:
 - Refer Section 13.5
- 3) Your answer should include the following points:
 - Refer Section 13.5(ii)



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UNIT 14 SOCIAL AUDIT*

Structure

- 14.0 Objectives
- 14.1 Introduction
- 14.2 Social Audit
 - 14.2.1 Meaning, Objectives, Role and Significance
 - 14.2.2 Social Audit in Selected Schemes
 - 14.2.3 Social Audit: Process and Significant Steps
 - 14.2.4 Social Audit: Impact
- 14.3 Social Audit: Issues and Challenges
 - 14.3.1 Social Audit: Planning
 - 14.3.2 Social Audit Process: Evaluation
 - 14.3.3 Social Audit: Inadequate Support
- 14.4 Social Audit: Innovative Practices and Way Forward
- 14.5 Conclusion
- 14.6 Glossary
- 14.7 References
- 14.8 Answers to Check Your Progress Exercises

14.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the meaning, objectives, role and significance of Social Audit in India;
- Bring out the schemes/programmes, in which Social Audit is conducted;
- Enumerate the process and significant steps in Social Audit;
- Describe the issues and challenges in conducting Social Audit;
- Examine the practice of Social Audit in selected states; and

* Contributed by Prof. Durgesh Nandini, Faculty of Public Administration, SoSS, IGNOU, New Delhi.

- Highlight the innovative practices that may be replicated in other states and measures for effective Social Audit.

14.1 INTRODUCTION

Social Audit is a powerful tool, that is, associated with accountability and promotes the Right to Information (RTI). It enhances transparency and accountability in the Government schemes/programmes. A Social Audit can be considered as an empowering process, in which the user community validates the usefulness and quality of the scheme/programme through monitoring process. It is beyond a Financial Audit that checks bills, vouchers and books of accounts. It is a continuous process that includes verification of works at the various stages of implementation of programmes/schemes with active involvement of the primary stakeholders.

Social Audit and RTI

In the process of Social Audit, team members need access to various government documents to monitor the implementation of scheme/programme; and provisions for the beneficiaries. These documents include bills and vouchers of reported expenditure for justification and verification of expenditure, invoices and receipts for purchase; and copy of supporting laws, norms and standards. As the Social Audit is fact finding, which is based on evidences and documents, therefore in case of non-availability of documents, due to malafide intentions of the bureaucracy, necessary documents can be obtained through the RTI. Thus, after obtaining the required documents, that is, evidence for clear understanding of what is to be expected from the Government, the Audit Team members and beneficiaries/community can verify official obligations and commitments against their own experiences of a particular scheme/programme. Keeping above in view, it can be stated that the RTI is a tool against corrupt practices and plays an important role in conducting the Social Audit.

The process of Social Audit took root with the launch of National Rural Employment Guarantee Act, 2005 that was renamed as the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), which mandates the regular conduct of social audits of works sanctioned under the MGNREGA in the Gram Sabha, at least, once every six months. It adds to effectiveness in the programme implementation and efficiency of political leaders and administrators at the grassroots level. The states in India have taken up Social Audit of various programmes/schemes such as MGNREGS, Pradhan Mantri Awaas Yojana (PMAY), Mid-Day Meal Scheme (MDM), Integrated Child Development Services (ICDS) and Public Distribution System (PDS). However, few research studies have been conducted on the nature, form and methods of conducting the Social Audits; institutional

architecture needed for undertaking audits; and challenges being faced by the stakeholders in above stated programmes. In this Unit, we will discuss the meaning, objectives, role and significance of the Social Audit. In addition, study will explore the major issues and challenges in conducting the effective social audits in India and way forward.

14.2 SOCIAL AUDIT: MEANING, OBJECTIVES, ROLE AND SIGNIFICANCE

Social Audit is accepted as an important mechanism to address corruption and strengthen accountability in the government schemes/programmes and service delivery. In this section, first of all, we will focus on its meaning, objectives, role and significance.

14.2.1 Meaning, Objectives, Role and Significance

The term social audit has been interpreted in several ways. In common parlance, audit refers to the inspection of finances of the institution by an authorised body or department. Here, it is worth mentioning that financial audit differs from social audit. The social audits are expected to examine the social accountability of public institutions from the perspective of welfare of the target/user community. In social science, it is recognised as a powerful tool to enforce transparency and accountability. However, the social scientists define it as a systematic and comprehensive evaluation of an organisation's social performance, which is elucidated as an organisational effort in augmenting the welfare of citizens. It is a continuous process that includes verification of works in implementation of the government schemes/programmes. It can be stated as an activity to audit a scheme/programme jointly by the Government, Civil Society Organisations and citizens especially its beneficiaries.

The need for social audit arises due to various reasons especially to address corruption and strengthen accountability of the concerned authority. As we know, the Government spends huge sums of money and resources on public welfare through various centrally and state sponsored schemes/ programmes. In this regard, every public institution is accountable for the money utilised to achieve the intended objectives in the public interest. Now, the Government is making efforts to meet the growing demand for accountability and social responsibility, and the citizens are becoming more assertive about their rights. In this context, they tried to influence the Government's decision-making process through the RTI, which is not sufficient. It has been realised that the Social Audit is necessary, since on the basis of Social Audit planning, management and measurement of non-financial activities; and monitoring of the department's operations can be carried out effectively. The first initiative regarding formal Social Audit can be observed in Section 17 of

the National Rural Employment Guarantee Act, 2005, which states that the Gram Sabha shall conduct Social Audit of all the projects under this scheme that are taken up within the Gram Panchayat.

The major objectives of Social Audit are to:

- a) Promote transparency and accountability in implementation of the government scheme/programme;
- b) Strengthen the democracy and institutions at the grassroots level;
- c) Encourage people's participation in effective implementation of the scheme/ programme;
- d) Engage, inform, educate and empower local people specially beneficiaries of the scheme/ programme about their rights;
- e) Provide a platform for local people specially beneficiaries of scheme/ programme to express their basic needs and grievances;
- f) Capacity building of persons participating in the Social Audit; and
- g) Strengthen the scheme/programme by improving planning, that is, based on feedback received through the Social Audit.

Social Audit: Role

It is a way of measuring, reporting and improving the social and ethical performance of an organisation. Hence, it is considered as a powerful tool to promote transparency, accountability and people's participation in government schemes/programmes. The team for Social Audit examines the physical, financial and implementation related issues. In this process, quantitative and qualitative inputs are publicly verified. On the basis of findings, it prepares a report and suggests suitable directions for developing further strategies for effective implementation of the scheme/programme. Major focus remains on higher degree of transparency, accountability, effective community participation, and better relationship and mutual trust between the community and local self-government for achieving the desired objectives.

The Social Audit contributes in realising rights of citizens and promotes active citizenship in rural areas. It educates and encourages the affected people to exercise their rights as a beneficiary of scheme/programme. Thus, the Social Audit encourages the citizens to claim their constitutional right to participate in governance; and improve government accountability and performance.

Social Audit: Significance

The significance of Social Audit lies in examining the effectiveness, usefulness and relevance of implemented scheme/programme so that its benefits must reach to its mandated target group. In addition, this process contributes in strengthening the accountability of the concerned authority. In addition, its importance is evident in the decision of the Ministry of Rural Development (MoRD) in consultation with the Comptroller and Auditor General (C&AG) of India, to notify the Mahatma Gandhi National Rural Employment Guarantee Audit of Scheme Rules in 2011. Its notification to ensure the proper conduct of social audit has inspired the stakeholders to contribute effectively. In these rules, responsibilities of the facilitating organisation, that is, Social Audit Unit, roles and responsibilities of the official, social audit pre-requisites, social audit process, responsibility of the State Government to take follow-up action and responsibility of the State Employment Guarantee Council (SEGC) to monitor the action taken, and place it before the State Legislature are clearly specified. In order to make the Social Audit exercise more effective, in June 2015, the MoRD in consultation with the C&AG constituted a task force. It is to be noted that to strengthen the social audit process, in December 2016, the MoRD has forwarded the Auditing Standards to all states for necessary action and compliance. The Second Administrative Reforms Commission (SARC) in its report also supported this initiative and stated, "...the social audit through client or beneficiary groups or civil society groups is yet another way of eliciting information on and prevention of wrong doing in procurement of products and services for government, in the distribution of welfare payments, in the checking of attendance of teachers and students in schools and hostels, staff in the hospitals and a host of other similar citizen service-oriented activities of government". Further, it added that it will be a useful supplement to surprise inspections on the part of the departmental supervisors. The Commission suggested that provisions for the Social Audit should be made a part of the operational guidelines of all schemes. The SARC recommended, "Operational guidelines of all developmental schemes and citizen centric programmes should provide for a social audit mechanism" (Second Administrative Reforms Commission, *Ethics in Governance*, January 2007, p. 133).

In the Gram Sabha meeting for Social Audit, the beneficiaries and persons who are concerned with the issues related to the Government schemes/programmes also participate effectively. In this regard, it is to be noted that the Audit is conducted in local language so that all members including women and marginalised section of society can also participate.

14.2.2 Social Audits in Selected Schemes

As the Social Audit opens the implementation process to public scrutiny and promotes active engagement of stakeholders for effective utilisation of the government funds, the government has therefore introduced the provision of Social Audit in many flagship programmes. However, as we have discussed earlier, the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and the National Food Security Act (NFSA) have provisions for conducting the Social Audit. The Government has issued guidelines for undertaking the Social Audits under other schemes also such as ICDS, Swachh Bharat Mission (SBM), etc. In this regard, legal and schematic provisions are incorporated in the Panchayati Raj Acts of various states.

In addition to the MGNREGS, examples of some states will be worth mentioning that have initiated the Social Audits in following Schemes/ Programmes:

- i) PMAY - Uttar Pradesh, Meghalaya, West Bengal and Chhattisgarh
- ii) PDS - Karnataka
- iii) MDM- Uttarakhand and Karnataka
- iv) SBM- Telangana and Karnataka
- v) ICDS -Telangana
- vi) Stree Nidhi loans to SHGs –Telangana
- vii) Tribal Development Society Programmes - Jharkhand
- viii) Rural Drinking Water Scheme - Karnataka

14.2.3 Social Audit: Process and Significant Steps

Now, it is clear that the Social Audit is a community-driven process. It is facilitated by community participation, such as the Gram Sabha members in a village. This process is undertaken in a systematic manner to achieve the desired objectives. It is planned in a series of steps. As each step is significant, therefore sufficient time is provided to complete each and every step. For better understanding, we can divide this process into following phases:

Phase 1: Pre- Social Audit

This phase includes all the preparatory activities that need to be undertaken before conducting the Social Audit such as selection of suitable Village Social Animator (VSA); sensitisation of community, NGOs and concerned Government Agencies; skill development for conducting VSA training and preparing reports; and preparation of a calendar of Social Audit schedule for each Panchayat and Block.

Phase 2: During Social Audit

The actual Social Audit activities are conducted in this phase like validation of the VSA committee members. The VSA committee conducts physical and oral verification of documents; and present its findings to the Gram Sabha. It facilitates the process in a socially ethical and accountable manner.

Phase 3: Post-Social Audit

The findings of Social Audit are consolidated for sharing in this phase, that is, preparation of Action Taken Report. Efforts are also made to resolve all grievances in the Gram Sabha itself. In case of any unresolved issue, it can be taken up in a public hearing (Jan Sunwai) or any other suitable forum.

In the process for undertaking Social Audit, following steps are necessary:

- i) Identification of the specific programme/scheme; and the deliverables to be covered in a Social Audit. All the pertinent information needs to be collected in advance to ensure the success of Audit. For example, in the case of MGNREGS, efforts are made to find out whether all workers received timely and full payment; proper identification of beneficiaries for individual asset creation; actual measurement and physical details of the work and work sites; details of expenditure incurred with bills and vouchers; verification of attendance registers to check actual presence of paid workers.
- ii) Providing timely information to the district, block and other officials regarding convening the Gram Sabha meeting for conducting the Social Audit.
- iii) Proper record management; and data collection.
- iv) Formation of the Social Audit Committee (SAC) for effective conduct of Social Audit.
- v) Capacity building of the Social Audit Committee members and Animators.
- vi) Selection of willing and dedicated members, Chairperson and Secretary for the Social Audit Committee in the first meeting of Gram Sabha.
- vii) For the systematic verification, the data collected from the Management Information System (MIS) records is verified against facts from the field; and validated to iron out any misinformation.
- viii) In preparing a Verification Report, the SAC will prepare a document on the basis of observations and analysis of its verification process, which will cover all important aspects of the programme delivery, including the

perception of the community regarding the quality, quantity, usefulness and structures created/ services provided.

- ix) For sharing of the Verification Report and decisions, after setting the ground rule and verifying the required quorum, the Gram Sabha asks the SAC to present the Verification Report.
- x) After documentation of the Gram Sabha decisions, the VSA prepares the Social Audit report in view of the programme. The format for writing the Social Audit report, includes the issues to be audited; details of information required; sources of information; method of information verification; legal implications; good practices that are being followed; findings of the Social Audit; details of the guilty; issues for further investigation; and major decisions.
- xi) Decisions of the Gram Sabha during the Social Audit must lead to concrete corrective actions. If the Gram Sabha takes decisions by itself, such decisions can be quickly implemented. In case of certain issues, which cannot be resolved at the Gram Sabha level, they must be taken up with the concerned departments and action should be initiated. It will establish the trust of the community in the Social Audit and the decisions of the Gram Sabha.

A summary of findings of the Social Audits conducted during a financial year must be submitted by the State Government to the Comptroller and Auditor General of India.

14.2.4 Social Audit: Impact

It is evident from the study that the effective Social Audit ensures transparency and accountability in implementation of schemes/programmes. In addition, it enhances community participation that results in effective implementation and ownership of the scheme/ programme. Consequently, the implementing agency becomes more accountable; and community becomes more responsible for achieving the goals of scheme/programme. In the Social Audit meeting, vulnerable people get a chance to express their concerns and share their opinion on scheme/programme implementation. As a result, joint efforts of the SAC members, officials and civil society groups and active people's participation speed up the scheme/programme implementation to achieve the desired goals. Above all, the community acquires the right to control their resources. In addition, the participatory democracy and governance are promoted. However, the beneficiaries of scheme/programme in case of the ineffective Social Audit, in certain states, are affected due to corruption, lack of efforts and apathetic attitude of officials, poor record management and inadequate staff for Social Audit, etc. In view of the above facts, in the next section, we will focus on major issues and challenges that

create hindrances in the process of Social Audit and successful implementation of the scheme/ programme.

Check Your Progress 1

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

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

1) Discuss the meaning and significance of Social Audit.

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2) What are the major objectives of the Social Audit?

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3) “In addition to the MGNREGS, the Government has issued guidelines for undertaking the Social Audit under other schemes also because it brings transparency and accountability”. Comment and highlight the names of any five schemes/programmes.

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14.3 SOCIAL AUDIT: ISSUES AND CHALLENGES

In the process of Social Audit, data[†] based on the study of selected states reflects that following challenges are being faced in the planning and execution of the Social Audit:

[†] Government of India, 2016, [https://nrega.nic.in/netnrega/writereaddata/ Circulars/2006 MoRD_Letter_and_CAG_Report.pdf](https://nrega.nic.in/netnrega/writereaddata/Circulars/2006MoRD_Letter_and_CAG_Report.pdf)

14.3.1 Social Audit: Planning

As per Section 6 (1) of the Mahatma Gandhi National Rural Employment Guarantee Audit of Schemes Rules, 2011, every Social Audit Unit (SAU) shall at the beginning of each year, frames an annual calendar to conduct at least one Social Audit in each GP in six months. A copy of the calendar shall be sent to all the DPCs for necessary arrangements. It is to be noted that the calendar should stipulate the sequence and dates of Gram Sabha and Social Audit public hearing for all the GPs of a concerned State. Further, any change in the actual conduct of Social Audit vis-à-vis the Social Audit calendar, which is approved, is considered as a violation of the process: and can be considered only with the approval of Director, SAU and Principal Secretary, Rural Development Department. The study explores the following challenges:

i) **Preparation of Annual Calendar for Social Audit: Lack of Efforts**

In Karnataka, Chhattisgarh, Meghalaya, Mizoram and Sikkim the annual calendars to conduct the Social Audit of GPs were prepared; and in remaining twenty states, either it was not prepared (14 states) or the states (6 states) have not furnished the information. As a result, annual calendar to conduct the Social Audit in each GP was not prepared in majority of states.

ii) **Social Audit: Inadequate Coverage**

Inadequate coverage of Social Audit has been observed in states, where Social Audit was conducted. The data reflects that out of 2, 34,594 GPs to be covered for Social Audit in 25 States, during 2014-15, only 1,20,841 , that is only 51 per cent GPs were covered; and in the remaining GPs, the Social Audit was not conducted.

14.3.2 Social Audit Process: Evaluation

For assessment of the effectiveness of conducted Social Audits, study was conducted in 1140 GPs in 25 states (Except Arunachal Pradesh, Kerala, Manipur and Nagaland) wherein Rs.414.89 crore was incurred on the MGNREGS works; and Social Audit was conducted during 2014-15. The study explores that in 16 GPs in Haryana, Jammu & Kashmir, Jharkhand, Punjab, Telangana and Uttarakhand, the State Government has informed that the Social Audit was conducted, but it was observed that the Social Audit was actually not conducted, which is a major challenge in case of availability of reliable data and information on Social Audit.

In addition, Section 3 (1) of the Rules specifies that the Social Audit should be conducted in every GP, at least twice a year. Here, it is worth mentioning that during 2014-15, the Social Audit was conducted in 1124 GPs, out of which in 368 GPs the Social Audits were conducted twice; and once in

remaining GPs. It is evident that 1492 Social Audits were conducted instead of 2248 as stipulated in the said provision. In this regard, a shortfall of 34 per cent Social Audits reflects a challenge in conducting regular Audits.

For facilitating the conduct of Social Audit, at least 15 days in advance of the scheduled date of meeting of the Gram Sabha conducting Social Audit, the Programme Officer ensures that records and information of the implementing agencies including Action Taken Report (ATR) on the previous Social Audit are properly collated and provided along with photocopies to the SAU. It is specified in Section 5 of the Rules and provisions of Para 13 of the Operational Guidelines 2013 (OG) that the SAU teams are required to conduct door to door visit to meet beneficiaries of the MGNREGS; and share relevant information with them. The team has to visit Project sites, and physically verify whether completed projects match the information, that is, contained in the records of implementing agencies. In this regard, especially in states where the SAUs were working, the study highlights the following challenges in conducting the Social Audit:

i) **Social Audit: Lack of Efforts and Poor Record Management**

In the states of Chhattisgarh, Gujarat and Meghalaya, documentation to ensure availability of Measurement Book, Stock Register, Muster Roll, etc. was not on record. In this regard, Tripura state has reflected a different image; neither the implementing agencies nor the SAU sought any record/information from district/block/GP level as required under the Rules. Consequently, there was little assurance of examination of records by the SAU. However, in Karnataka, no communication was made by SAU to DPC/PO regarding seeking of records to be produced. It has been observed that in Andhra Pradesh and Telangana, the SAU sent intimation for conducting Social Audit 4 to 13 days in advance by email instead of the prescribed 15 days as per Rules. As a result, records in regard to complete expenditure were not made available for Social Audit. It is to be noted that in Tamil Nadu, all information and records were obtained; and examined by the SAU teams.

In this study, in 197 out of 497 GPs, efforts were not made for door-to-door visit to meet and share relevant information with beneficiaries of the MGNREGS. In addition, non-requisition/production of records in large number of cases reflects non-compliance of the laid down provisions under the Rules. Further, the mechanism in place in conducting Social Audit was also seriously eroded in the absence of complete documentation and appropriate verification procedure; and verification of the Project sites.

ii) **Awareness among Stakeholders about Social Audit meeting**

Under MGNREGS Rules, 2011, Section 4 (2) (c) of Rules and Para 13.3.2 of OG specify that the labourers and the village community shall be informed about the Gram Sabha conducting Social Audit to ensure full participation. In this context, the resource persons as well as the Programme Officers are expected to be informed. It is to be noted that in 91 GPs in Himachal Pradesh, Odisha and Tripura, labourers and village community were not informed about the Gram Sabha meeting. In Chhattisgarh, 45 out of 50 selected GPs, no documentary evidence regarding intimation of Social Audit by the Gram Sabha to labourers and village community was produced. However, in 45 GPs in Assam, interaction with 363 Job card holders was done to assess the awareness level on Social Audit and their involvement in the process. It has been observed that 9 to 67 per cent villagers expressed their ignorance about the process of Social Audit. Even the Director, SIRD also mentioned that only 10 to 25 per cent people could be involved during the Gram Sabha meeting for Social Audit. In Bihar, Jammu & Kashmir and West Bengal, the labourers and village community were not informed about the Gram Sabha conducting Social Audit. Keeping above situation in mind, it can be stated that unaware and ignorant stakeholders can never contribute in Social Audit or achieving the goals.

iii) **Social Audit: Role of SAU and Gram Sabha**

It is stated in Para 13.3.5 of OG that to conduct the Social Audit process, a Gram Sabha shall be convened to discuss the findings of the verification exercise, and review the compliance on transparency and accountability, fulfilment of the rights and entitlements of labourers, and proper utilisation of funds. The Gram Sabha has to be convened in a neutral public space. The meeting is to be chaired by an elderly villager who is not a part of the Panchayat or any implementing agency. In meeting, decisions and resolutions will be put to voting. Further, dissenting opinion must be recorded in the minutes of the meeting. At the beginning of the meeting, it is necessary to read out the Action Taken Report on the previous Social Audit conducted by the Gram Sabha. In this meeting, all the concerned officials must be present to answer queries from the members of the Gram Sabha. As per Section 6 (7) of the Rules, the District Programme Coordinator (DPC) must attend the Gram Sabha meeting or nominate an official of appropriate level for smooth conduct of the meeting. The proceeding of the Social Audit should be video recorded, compressed using latest compression techniques and uploaded on website, www.nrega.nic.in without editing. This video recording is to be stored in the custody of DPC. To facilitate the conduct of Social Audit by Gram Sabha, the resource persons deployed by the

SAU, along with primary stakeholders must verify that the wall painting showing details of money paid to all job card holders have been done using the prescribed format. In this regard, the details contained therein are a true reflection of the records as they obtain in *www.nrega.nic.in*; and at the Block and Panchayat office. It is to be noted that as per Para 13.3.12 of OG, the SARs should be prepared in local language by the SAU. The SARs shall be counter-signed by the Chairperson of that particular Gram Sabha. In this regard, a copy of the report has to be displayed on the notice board of the GP for minimum seven days. The SAU is responsible for hosting of the SAR including Action Taken Report in the public domain.

In practice, it has been observed in holding and reporting mechanism by Gram Sabha in 1124 GPs test checked in audit for 25 out of the 29 states has resulted in:

- a) **Agenda of Gram Sabha Meeting:** In 135, that is, 12 per cent GPs in 11 States, the Gram Sabha meetings were not convened to discuss the findings of Social Audit.
- b) **Venue of Gram Sabha Meeting:** In 21 per cent GPs of 11 states, the Gram Sabha meetings were not held at neutral place.
- c) **Chairperson of Gram Sabha Meeting:** In the 50 per cent GPs of 20 states, the Gram Sabha meetings were not chaired by an elderly person. In this context, as per reports, elderly villager chaired the Gram Sabha meetings in Uttar Pradesh, Chhattisgarh, Tamil Nadu and Sikkim.
- d) **Voting for Decision and resolutions of the Gram Sabha:** In 40 per cent GPs of 12 states, decisions of the Gram Sabha were not put to vote in meeting.
- e) **Discussion on ATR:** In 50 per cent GPs of 15 states, the ATRs on the earlier conducted Social Audits were not discussed in the Gram Sabha meetings. It is to be mentioned that the Social Audit was conducted for the first time in Madhya Pradesh during 2014-15.
- f) **Countersign of Chairperson on Report:** In 48 per cent GPs of the 16 states, the SARs were not countersigned by the Chairperson of the Gram Sabha. Further, no information was provided in Punjab.
- g) **Status of SARs in Social Audit:** It is worth mentioning that during 2014-15, 1492 SARs were supposed to be prepared in 25 states; and 1270 SARs were prepared. In 10 states, 30 out of 557 Social Audits were conducted, and 40 per cent SARs were not prepared. In the remaining 15 states, 935 Social Audits were conducted and the SARs were also prepared. Thus, it is evident that status of the

preparation of SARs in various states was not the same, and that is the challenge for many SAUs.

- h) **Standard format for SAR:** The study reflects that out of 1270 SARs prepared in test checked GPs during the year 2014- 15, 29 per cent SARs in 11 states were not prepared in the standard format.
- i) **Hosting of SARs on the website:** It has been observed that out of 1270 SARs prepared during 2014-15, 14 per cent were uploaded on the Ministry's website by six states. It includes 50 SARs uploaded on states website. However, Sikkim uploaded 50 SARs on the State's website only.
- j) **Preparation of SARs in Local Language and Display on Notice Board:** In 30 per cent GPs of nine states, SARs were not prepared in local language; and in 51 per cent of the GPs of 15 states, SARs were not displayed on the identified Notice Board.
- k) **Wall Painting to Display:** In 78 percent GPs of 21 states, there was no wall painting to display details of money paid to job cardholders in the MGNREGS.
- l) **Proceedings of Gram Sabha:** In 82 percent GPs of 24 states, proceedings of Gram Sabha were not video recorded. However, in 200 GPs video recording of proceedings were done, but recording of 160 GPs was not uploaded on the website.
- m) **Presence of DPC or Nominated Officer in Gram Sabha Meeting:** In 58 per cent GPs of 19 states, neither the DPC nor nominated officer had attended the Gram Sabha meeting for Social Audit.
- n) **Participation of Village Community:** In 58 per cent GPs of 20 states, Gram Sabha meetings were convened with less than 10 per cent of participation of the village community.

After a thorough study, it can be stated that deficiencies in planning and execution of the Social Audit like irregularities and lack of efforts in preparation of annual calendar for Social Audit, record management, documentation, verification of project sites, convening of Gram Sabha meetings, voting for decision and resolution of the Gram Sabha, preparation of SARs, video recording of the proceedings of Gram Sabha result in corruption, inappropriate decisions and ineffective implementation of the Government schemes/programmes. In this regard, lack of awareness and knowledge among the stakeholders contributes more in poor implementation of the programmes, which directly affect the beneficiaries and development. It has been observed that a sizable number of SAUs also failed to provide adequate support mechanism such as availability of records, proper reporting and strict follow-up of the Social Audits to ensure its efficacy. However, in certain cases even

the District Programme Coordinators and Programme Officers couldn't provide effective and adequate support to conduct the Social Audit.

14.3.3 Social Audit: Inadequate Support

Inadequate support to conduct the Social Audit poses the following challenges, which affect the process of Social Audit:

- i) **Apathetic Attitude of implementing Agency:** The requests for postponement of the social audit, non-availability of documents on time, not sending independent observers for the Gram Sabha meetings, and failure in taking action on the findings of Social Audit reflects apathy on the part of Agency, which is a major challenge in conducting the Social Audit.
- ii) **Non-Cooperation from Administrators:** It has been observed that in some states, the Rural Development officials are cooperative, but the officials from the line departments (Forest, Horticulture and Sericulture) who implement the schemes show non-cooperative attitude during the Social Audit process, which demotivates the team members.
- iii) **Inadequate Staff for Social Audit:** As all the states have not properly established independent society, therefore hiring staff for the Social Audit units is a challenge in some states.
- iv) **Inappropriate Selection of Resource Persons:** The selection process followed in many states due to vested interests or political pressure, results in the recruitment of inappropriate persons. As a result, majority of such persons either serve their masters or treat their job as a government job; and are more anxious about stability, pay and perks. However, some of them indulge in corruption and peddling political influence, which seriously impacts the social audit process. In such situation, the process of Social Audit becomes a routine form-filling exercise with lack of people's participation and involvement.

In view of above, it is necessary to observe and study the innovative practices that may be replicated in other states, and identify the necessary measures for effective Social Audit, which will be highlighted in the subsequent section.

14.4 SOCIAL AUDIT: INNOVATIVE PRACTICES AND WAY FORWARD

Best practices: Study of selected States

i) Andhra Pradesh

In case of the Social Audit, Andhra Pradesh has become a role model for all the other states. The innovative practices include:

- a) Conducting Monthly Review Meetings, at the district level, with District Collector and District Vigilance Officers;
- b) Conducting Monthly Review Meetings with the State Vigilance Wing and District Vigilance Officers;
- c) Conducting technical verification in the presence of workers and mates;
- d) Identification of Resource Persons (village and block levels) from the workers' families;
- e) Wall writings in all the Gram Panchayats during the Social Audit process, which promotes transparency and accountability; and
- f) Society for Social Audit, Accountability and Transparency, an autonomous body insulated from the government interference, was set up to uphold the concept of eternal vigilance by the people, facilitated by the social activists and Government acting in conjunction.

ii) **Jharkhand**

- a) For grievance redressal, public hearings are heard by the Juries with PRI and CSO members;
- b) For the guidance of the Jury members, an advisory for action to be taken on specific irregularities has been formulated;
- c) As per requirement, hearings are held at all levels, that is, the Panchayat, Block, District and State levels;
- d) To examine the conduct of Social Audit, special and test audits are promoted; and
- e) For the Information, Education & Communication (IEC) activities, cultural workshops are conducted; and songs in eight different languages have been prepared to disseminate information and knowledge.

iii) **Chhattisgarh**

- a) In addition to the MGNREGS, the Social Audit Team collects complaints regarding other issues also and hands it over to the Sarpanch and Sachiv.
- b) To ensure the active involvement of community in the Social Audit process, wall writing of muster rolls, bills and measurement books is carried out in the State.

iv) **Karnataka**

- a) After every three rounds of the Social Audit, staff are shuffled that contributes in effective Social Audit.

v) **Punjab**

- a) To work judiciously, the Resource Persons do not accept hospitality at any level, which mitigates corruption.

The study suggests to immediately taking the following measures for effective Social Audit:

- i) **Preparation of Annual Calendar:** Necessary steps must be taken to ensure the regular and timely preparation of the Annual Calendar; and monitoring of its proper implementation.
- ii) **Timely submission of records to the Social Audit Team:** All the states have to notify rules for ensuring timely submission of records to the Social Audit team; and nature of punitive action to be taken for non-submission of the records. In addition, regarding verification of all job card holders and worksites, necessary action and efforts from the Government and Stakeholders are required in ensuring that the SAU resource persons comply with the same.
- iii) **Record Management:** Effective measures such as adequate staff and training of officials in record keeping and management, at all levels, will facilitate credibility of the Social Audit.
- iv) **Enhancing level of Awareness and Knowledge of Stakeholders:** For ensuring active participation and contribution of the Stakeholders in the Social Audit process, it is utmost necessary to provide them adequate information and knowledge to enhance their level of awareness and capacity of decision- making.
- v) **Conducting Social Audit Meetings and Reporting Mechanism:** As it has been observed that the Social Audit meetings are not conducted properly as per the provisions of Rules and hence, political leaders, administrators and citizens should be encouraged to make joint efforts in this endeavour to ensure successful implementation of the schemes and programmes through effective Social Audit so that the target group must be benefitted to grow.
- vi) **Training of Social Audit Team:** Capacity building of the Team members through training will ensure the effective contribution of members in conducting the Social Audit; and in verification of project sites and conducting door to door visit in compliance with the provisions of Rules.
- vii) **Conducting Periodic Test Audits:** A State Level Technical Team should be placed and monitored, in all states, for conducting periodic test audits on the basis of a sample of GPs, which is already audited by the SAUs.

- viii) **Use of Information, Education & Communication:** For creating awareness and enhancing knowledge among stakeholders about the Social Audit process and ensuring proper implementation of the Government schemes/programmes so that benefits must reach the target groups, sincere efforts and necessary action must be taken as early as possible through constant IEC activities.

In the end, study emphasises on the Social Audit as a powerful tool to promote accountability, which requires dedicated political leaders, administrators and resource persons with a strong commitment to work, a pro-poor attitude and ability to work for long hours in remote areas and difficult conditions; and active people's participation.

Check Your Progress 2

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

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

- 1) Discuss the process and significant steps that are followed in Social Audit.

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- 2) What are the basic issues and challenges in conducting Social Audit?

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- 3) Explain the innovative practices that may be replicated in other states and measures for conducting effective Social Audit.

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14.5 CONCLUSION

The Social Audit is considered as a powerful tool to ensure and promote transparency, accountability and people's participation in the Government schemes/programmes. It examines physical, financial and implementation related issues. It is a continuous, bottom up, process to understand the efficiency of services from the perspective of users. In this process, quantitative and qualitative inputs are publicly verified. On the basis of findings, the SAC prepares a report and suggests suitable measures for developing further strategies for effective implementation of the scheme/programme. In this Unit, we have discussed the meaning, objectives, role and significance of the Social Audit in India. In addition, the study has highlighted its presence and role in selected schemes, process and significant steps, and major issues and challenges in conducting the Social Audit. In this context, to assess the impact of Social Audit, we have examined the practice of Social Audit in various states. In the end, the study emphasised on the innovative practices that may be replicated in other states also and suggested necessary measures for effective Social Audit of the Government schemes/programmes. It is worth mentioning that the focus of stakeholders, political leaders and officials should always be on promoting higher degree of transparency; accountability; effective community participation; and better relationship and mutual trust between the community and local self-government for achieving the desired objectives through the Social Audit.

14.6 GLOSSARY

Financial Audit: It is an independent and objective evaluation of an organisation's financial reports and financial reporting processes, that is, done by experts or authorised Government Agencies. The Financial Audit is based on financial statements. In this Audit, verification is limited to entries in the books of accounts, bills and vouchers. The primary purpose for financial audit is to give reasonable assurance that financial statements are accurate and complete.

Information, Education & Communication: It (IEC) refers to a strategy, which aims to create awareness and disseminate information regarding the benefits available under various schemes/programmes of the Ministry, and guide the citizens on how to access them. The objective is to augment and harness full potential of IEC leading to empowerment of rural poor, and participatory model for development in India. This strategy has catered to the different needs of the citizens through the various tools used for communication.

Social accountability: It refers to involving citizens and communities in the process of governance so that decisions and actions of the citizens and

organisations with power are made public and can be questioned whenever required. The accountability depends on the willingness of the user community and implementing agency to engage with each other in undertaking a social audit for effective implementation of the scheme/ programme and social welfare. Their joint efforts not only contribute in governance but also lead to better service delivery and community empowerment.

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14.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer must include the following points:
 - Refer Section 14.3
- 2) Your answer must include the following points:
 - a) Promote transparency and accountability in implementation of the government scheme/programme;
 - b) Strengthen the democracy and institutions at the grassroots level;
 - c) Encourage people's participation in proper implementation of the scheme/ programme;
 - d) Engage, inform, educate and empower local people specially beneficiaries of the scheme/ programme about their rights;
 - e) Provide a platform for local people specially beneficiaries of scheme/ programme to express their basic needs and grievances;
 - f) Capacity building of persons participating in the Social Audit; and
 - g) Strengthen the scheme/programme by improving planning, that is, based on feedback received through the Social Audit.
- 3) Your answer must include the following points:
 - Refer Section 14.2.1 and 14.2.2

Check Your Progress 2

- 1) Your answer must include the following points:
 - Refer Section 14.2.3
- 2) Your answer must include the following points:
 - Refer Section 14.3
- 3) Your answer must include the following points:
 - Refer Section 14.4



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UNIT 15 RTI : BRIDGING THE GAP BETWEEN RIGHTS AND THEIR ENFORCEABILITY*

Structure

- 15.0 Objectives
- 15.1 Introduction
- 15.2 Importance of Right to Information
- 15.3 Stakeholders in Right to Information
- 15.4 Implementation of the Right to Information Act
- 15.5 Bridging the gap between the Right to Information and its Enforceability
- 15.6 Conclusion
- 15.7 Glossary
- 15.8 References
- 15.9 Answers to Check Your Progress Exercises

15.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the status and importance of right to information;
- Identify the conflicting interests of stakeholders of right to information;
- Analyse the enforcement of the right to information;
- Examine the gaps and obstacles in realising the right to information; and
- Suggest necessary measures for effective enforceability of the RTI Act.

15.1 INTRODUCTION

In a democratic country, rights are very significant for the growth and development of an individual and society. In India, Part III of the Constitution guarantees fundamental rights. One of the very important rights is that of freedom of speech and expression, which includes right to know. The right to information flows from the right to know, which has been recognised as a facet of human rights. “Where a society has chosen to accept

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

democracy as its creedal faith, it is elementary that the citizens ought to know what their Government is doing” (AIR 1982 SC 149). Movement for Right to Information (RTI) Act got impetus with several judgments of the Supreme Court, struggle of civil society organisations at the grassroots level and in pursuance of international obligation to effectively guarantee the Right to Information. The Government of India notified the Right to Information (RTI) Act, 2005 on 21st June, 2005 under the obligation of International Covenant on Civil and Political Rights (ICCPR). The RTI Act became operative from 12th October, 2005.

The RTI Act, 2005 sets out the practical regime of right to information for each and every citizen to access information from the public authorities. It is a complete Code, as not only it confers right to information but also lays down procedure for accessing information. It provides for the duties of public authorities and delivery of information within a given time frame. It also makes provision for the effective grievance-redressal forums by incorporating offices of the Central Information Commission (CIC), State Information Commissions (SICs) and provisions for appeals and penalties, if information is not provided within stipulated time. The RTI Act aims for informed citizenry and transparency of information, which are vital for containing corruption and for holding government and its instrumentalities accountable to the governed. It is a major step in empowering citizens, promoting transparency and preserving paramountcy of democratic ideal.

Such a legislation, which guarantees openness and accountability, is bound to have impact on the working of all the government agencies. The disclosure of information by public authorities is bound to be in conflict with the interests of those against whom information is sought. Those not in favour of the RTI feel that it would adversely affect normal functioning of the Government's operations, optimum use of restricted financial resources and protection of confidential sensitive information.

It is not the law which matters, but its effective implementation can make a difference in the lives of people. For the effective implementation of the Act, people need to be aware of their rights and responsibilities. The RTI Act is like double edged sword, which needs to be used with care and caution, if conflicting interests of information seekers and information givers are to be harmonised for the preservation of constitutional ideals of democracy and good governance.

In the present Unit, an attempt has been made to examine the use and implementation of the Right to Information Act. It traces the problems faced by the people in realising their right to information and suggests measures for its effective enforceability.

15.2 IMPORTANCE OF RIGHT TO INFORMATION

The importance of right to information lies in the object of the RTI Act, 2005. The basic object of the Right to Information Act is to empower the citizens, to promote transparency and accountability in the working of Government, to contain corruption, and to enhance people's participation in democratic process thereby, making our democracy work for the people in a real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

The RTI Act is a powerful instrument for making people aware of the Government transactions, records, public policies and programmes. It makes it incumbent upon the government to be open and transparent in its working, so that good governance may be ensured. In present times, the Government need to be responsible, people-oriented and dedicated for the empowerment of deprived sections of the society. If people have satisfaction and faith in governance, it motivates them to participate in governance and play a significant role in nation building. With active participation of people, growth is possible in all spheres be it social, economic, intellectual, moral or administrative. The effective use of the RTI Act not only redresses the grievances of the masses, but also fixes the responsibilities upon wayward public authorities. It creates an atmosphere of accountability and transparency and promotes a culture of duty.

We all know that right to information is a basic requirement of good governance in any legal system. The Right to Information (RTI) Act was enacted in 2005 to ensure transparency and accountability. The Right to information is sine qua non of good governance in democratic set up. Emphasising upon importance of RTI, Thomas Emerson, observed, "*the society uses freedom of information and expression to protect certain values, which can be grouped into four broad categories. The first of these is assuring individual self-fulfillment. The second set of values focuses on means of attaining the truth. The third addresses a method of securing the participation of members of the society in social and political decision-making and the fourth category of value seeks to maintain the balance between stability and change in the society*" (Emerson, 1963).

In the case of *State of U.P. v. Raj Narain* (AIR 1975 SC 865), on the issue whether right to freedom of speech and expression guaranteed under Article 19(1)(a) includes right to know, Justice Mathew remarked, "*...in a community under a system of representative government, there can be only few facts which require to be kept secret with that solidity which defies even the*

inquiry of courts of justice. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can 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... ”.

Stressing the importance of RTI, in the preface of First Report of Second Administrative Reforms Commission, Veerappa Moily, the Chairman wrote,

“The Right to Information Act is a path-breaking legislation which signals the march from darkness of secrecy to dawn of transparency. It lights up the mindset of public authorities, which is clouded by suspicion and secrecy. Openness in the exercise of public power – Executive, Legislative or Judiciary – is a culture, which needs to be nurtured, with privacy and confidentiality being an exception. The right to information will also be a powerful means for fighting corruption. The effective implementation of the Right to Information Act will create an environment of vigilance which will help promote functioning of a more participatory democracy” (Second Administrative Reforms Commission, 2006).

The RTI Act, 2005 “attempts to harmonise conflicting interests between the citizens' right of transparency of information in administrative functioning and efficient governments' confidentiality in sensitive matters” (Singh, 2006). The preamble to Act of 2005 itself states, “it sets out to provide a practical regime of right to information in order to promote transparency and accountability.” The Act enables the citizens to get information held by the public authorities. It is an effective means to reduce corruption and bring good governance. Every government department is bound to provide information. “It is indisputable that in a democratic polity, to ensure and facilitate the continued participation of people in effective functioning of the democratic process, people must be kept informed of the vital decisions taken by the government and the basis thereof. Therefore, right to seek and receive public information becomes a pillar of democratic set-up” (Satish, 2006).

15.3 STAKEHOLDERS IN RIGHT TO INFORMATION

In a country, every individual and institution are stakeholders in the regime of right to information. The RTI Act was enacted with the objective to establish a practical regime for citizens to access information held by the Public Authorities. The applicability of the Act is very wide, protecting all

the areas of governance. This Law not only applies to Union, State and Local Governments but to all authorities and instrumentalities of the government receiving substantial financial grants.

Working of the Act has revealed that it has enhanced interaction between the people and the government and its agencies. It has introduced a new awareness about the rights of citizens and highlighted openness and transparency as essential features of governance. It imparted a sense of accountability in official conduct and helped to make public servants responsible for their actions and decisions. Following are the public authorities and persons with an interest or concern in the Right to Information:

i) Government

Basic institutional structure/processes have been set up by the Central Government as per the requirement of the RTI Act. The Department of Personnel & Training has been made the Nodal Department for the RTI implementation at the Central level. Various State Governments have already enacted laws for access to information in some form or the other. Some State Governments have taken innovative initiatives in line with the spirit of the Act. The key initiatives are creation of the RTI Cells in almost all governmental organisations as per mandate of the RTI Act, 2005 for receiving the applications of RTI and providing information to the information seekers. Jankari Call Centre of the Government of Bihar is noteworthy, in this context. It is doing a laudable job since its inception.

ii) Public Authority

A "public authority" is any authority or body or institution of self-government established or constituted by or under the Constitution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government. The bodies owned, controlled or substantially financed by the Central Government or a State Government are also public authorities. The Non-Governmental organisations substantially financed by the Central Government or a State Government also fall within the definition of public authority.

Public authorities have designated some of its officers as Public Information Officers (PIOs). They are responsible to give information to a person who seeks information under the RTI Act. These are the officers at sub-divisional level to whom a person can give her/his RTI application or appeal. These officers send the application or appeal to the Public Information Officer of the public authority or the concerned appellate

authority. An Assistant Public Information Officer is not responsible to supply the information. The Assistant Public Information Officers, appointed by the Department of Posts in various post offices, are working as Assistant Public Information Officers for all the public authorities under the Government of India (Government of India, 28th November 2013, https://rti.gov.in/rticorner/guide_2013-issue.pdf).

iii) ***Information Commissions***

The Central Information Commission and the State Information Commissions in the states have an important role in upholding the ideals of the RTI Act. “Every Information Commission is to function as an adjudicator as well as a regulator. The objective of the empowerment of common man through the RTI can be facilitated if the process of adjudication is made more simple and convenient for information seekers. The rule of law has to be established by the Information Commissioners. The Information Commissions have to be strong and independent to reach out to the common people. Both Central and State Information Commissions are the regulator of the process of implementation of the RTI Act” (Satish, 2006).

iv) ***First Appellate Authority***

The first Appellate Authority has a very important role under the RTI Act, 2005. The independent and judicious examination of appeals by the First Appellate Authorities would lead to higher satisfaction to the appellants. This would, in turn, result in less number of second appeals to the Information Commission. The information sought by an applicant should either be supplied to her/him by the Public Information Officer or application should be rejected within the time prescribed under the Act. If additional fee needs to be charged from an applicant, timely communication in this regard should be sent to her/him.

v) ***Political Executive***

Political leaders own a higher level of responsibility. Citizens expect greater transparency from their representatives in their official work. As the decision-making processes are open to public scrutiny, therefore the elected leaders show greater cooperation. In a democracy, the RTI Act is both a challenge and an opportunity for the political leaders. They take responsibility for their decisions, and use the public forum for their interests.

vi) ***Bureaucracy***

The bureaucracy is supposed to be genuine “public servant” delivering justice. “The bureaucrat is not only a custodian of information, but a trustee too. Where government is committed to transparency, the civil servants become accountable for everything what they do. It is obligatory

for them to be more responsive to the needs of the public. The Act directs that the management of official records should be systematic and computerised, in order that information can be scientifically organised for convenient retrieval and delivery to every information seeker. It's a challenge for the bureaucracy to modernise the administrative machinery and make the official systems people-friendly" (Satish, 2006).

vii) Corporate Sector

The Act gives the right to information only to the citizens of India. It does not make provision for giving information to Corporations, Associations, Companies, etc., which are legal entities/persons, but not citizens. However, if an application is made by an employee or office-bearer of any Corporation, Association, Company, NGO, etc. indicating her/his name and such employee/office bearer is a citizen of India; information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation, etc.

The Civil Society Organisations (CSOs) have enhanced the reach and awareness of RTI among the masses. It is mostly with the support of the social activists and CSOs that even a person of a grassroots level is able to use the RTI Act for asserting and ensuring her/his basic rights. However, given the geographical size and population, the reach of CSOs and social activists is limited. The CSOs have also contributed towards training of the PIOs and AAs and have made them aware of their roles and responsibilities under the RTI Act.

In a globalised world where economy is increasing fast, nations like to transact with that country, which is open and corruption free. In most of the nations of the world, the RTI legislation is in operation. The RTI Act is an important tool for eradicating corruption and ensuring good governance. In India, too, corporate sector has a stake in the success of the RTI Act. Good governance encourages foreign investments, which can be used in the interest of public welfare. The enhanced credibility of a transparent Government can be useful for the corporate sector, as an engine of economic growth.

viii) Media

Media is designated as fourth pillar of the State, besides executive, legislature and judiciary. It plays a key role in governance of the country. It was the media because of which right to information got a place in Article 19(1)(a) of the Constitution of India. The Press Council of India played a crucial role in drafting the legislation of RTI. Media has played an important role in generating awareness at a mass scale. While there has been no major media campaign for promoting the usage of the RTI

Act, nonetheless the awareness on the Act has been generated through news articles based on RTI investigation. Journalists at times have played a dual role – as the users of the RTI Act and as watchdogs, monitoring and scrutinising the implementation of the Act. “Through reports as well as media-sponsored RTI camps, people are learning how to seek remedies. Many people have received passports, pensions, ration cards and IT refunds using training received in RTI camps”. Further, “As a responsible media, it can expose the working of the government's functionaries, especially if there is any misuse of authority. It can elicit authentic information. It can warn against arbitrariness and excesses committed by authorities. The media can influence executive decisions fighting for the causes of public interests. The media can build up public awareness regarding the RTI Act by having discussions and debates on public forums, and also through editorials in newspapers. It can give publicity to success stories of struggle for RTI to motivate others” (Kumar, 2007).

The RTI Act has the potential to bring in a socio-economic revolution, provided various stakeholders take up their responsibilities as per the spirit of the Act.

15.4 IMPLEMENTATION OF THE RIGHT TO INFORMATION ACT

After its independence on 15th August, 1947, India adopted democratic form of government and policy of public welfare. A very important role of the government is to take care of its people, protecting their rights and liberties. In fact, the evolution of the State has been a result of people's surrendering their rights, privileges and powers in favour of the State. The Social Contract theory of political philosophy implies an actual or hypothetical contract or agreement, between the ruled and their rulers, defining the rights and duties of each. Every state is entrusted with a duty of providing RTI machinery to ensure a responsive administration guaranteeing justice, liberty and equal opportunity in seeking information. The State must safeguard the interest of its people by ensuring supply of essential public goods and services to its citizens. In a Police State, the Government has to maintain law and order, but in a Welfare State, the structure of governance and its systems need openness, transparency, responsiveness and citizens' satisfaction. In the philosophy of good governance, greater participation of citizens is required to ensure quality in the working of the government and in strengthening policy-making decisions.

With the pious aim of bringing transparency and accountability in public administration and for improving implementation of key Government policies, the RTI Act, 2005 was brought into existence. The Central

Government has set up the basic institutional structure/processes as per the RTI Act's requirements. The Department of Personnel & Training has been made the Nodal Department for the RTI implementation at the Central level. Various State Governments have enacted laws for access to information in some form or the other. Some State Governments have taken innovative initiatives in line with the spirit of the Act.

i) Initiatives of the Government for Effective Implementation of the RTI Act

The Right to Information Act, 2005 mandates timely response to citizens' requests for government information. The RTI portal of the Government of India is "an initiative taken by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a- RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs, etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the Government of India as well as the State Governments" (<https://rti.gov.in/aboutrti.asp>).

The Central Information Commission (CIC) was constituted with effect from 12-10-2005 under the Right to Information Act, 2005. The jurisdiction of the Commission extends over all Central Public Authorities. The CIC, in order to fulfill its mandate of preparation and forwarding of the Annual Report to Appropriate Government, invites online quarterly returns from the Public Authorities (PAs) in a prescribed pro forma in accordance with Section 25(3) of the Right to Information (RTI) Act, 2005. Section 26 (2) of the RTI Act requires the State Governments "to 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". Further, it requires the Government to update the guide at regular intervals. Accordingly, the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training publishes a guide, which help all the stakeholders of right to information – information seekers in getting information, Public Information Officers in dealing with the RTI applications, First Appellate authorities in taking cogent decisions on appeals and the public authorities in implementing various provisions of the Act in the right earnest.

Today, almost all the States of India are having their own websites with RTI, SIC and PIO Links available as commitment to the good governance. JAANKARI, an RTI cell was set up by the Bihar government in January 2007 and has been running successfully

generating applications under the RTI for people all over Bihar. It was awarded as the Best E-Governance Initiative by the Government of India.

The First Report of Second Administrative Reforms Commission (ARC) 2006 headed by Veerappa Moily, in its report stated, *“the Right to Information Act, 2005 signals a radical shift in our governance culture and permanently impacts all agencies of state. The effective implementation of this law depends on three fundamental shifts: from the prevailing culture of secrecy to a new culture of openness; from personalised despotism to authority coupled with accountability; and from unilateral decision making to participative governance. Obviously, one single law cannot change everything. But this fine legislation is an important beginning. Its effective application depends largely on the institutions created, adequate participation of people and the public servants.”* The Commission, therefore, focused on two broad categories of issues for its effective implementation: first on Official Secrets and confidentiality issues and other on the steps required for effective implementation of the Act.

ii) Role of Civil Society Organisations in Effective Implementation of the RTI Act

Passing of the RTI Act has not only infused transparency and accountability in the working of public departments, but has also increased the efficiency of decision-making process. This has led to reduction in corruption in the country, which is evident from the studies conducted on implementation of the Act. The Transparency International (TI) reported in 2009 that perceived corruption in India (a score of 3.5 out of 10) has declined at the rate of about 15-20 per cent per year, mainly due to the implementation of the RTI Act (PricewaterhouseCoopers, 2009).

The first study was conducted by PRIA (Society for Participatory Research in Asia) in August 2006 in order to track the progress of RTI Act in 12 states of India (Himachal Pradesh, Haryana Rajasthan, Jharkhand, Madhya Pradesh, Uttar Pradesh, Uttaranchal, Chhattisgarh, Andhra Pradesh, Kerala, Gujarat and Bihar). The indicators of the study were- namely, the constitution of State Information Commission and its role, role of Nodal agencies, appointment of PIOs, experience of seeking information from PIOs, mandatory disclosure under Section 4 of the RTI Act and the role of government in educating people under Section 26 of the Act. The study indicated, “People belonging to rural areas feel that appeal process is very expensive. Public Information Officers have been appointed in most public authorities in the states. The process of accessing information by people

has started slowly through Right to Information Act. However, there exists great confusion in definition of public authority. Most of the PIOs at state level and district level are not cooperative and they sometimes threaten applicants to withdraw applications. The PIOs should be given adequate training so that they are sensitive to people's needs and the PIOs who are guilty of deliberate denial of information should be penalized" (PRIA, 2006).PRIA also collected data from 65 representatives of civil society organisations who have been working on RTI Act for at least one year in 2007, and in 2008 made a Survey of 420 individuals using RTI Act.

The (RTI Assessment and Analysis Group) RAAG study of 2009 concluded, "while the awareness of the importance of transparency has indeed increased manifold [in government], infrastructure needs to be built around it to allow it to work better." The RAAG report also notes, "the key to increasing accountability of public authorities (vis-à-vis the RTI) lies in bringing about attitudinal changes" within the government at various levels. Similarly, thePricewaterhouseCoopers (PwC) study of 2009 notes a lack of adequate planning among public authorities to "proactively identify and address constraints in providing citizens with information"(The World Bank, 2012) .

Check Your Progress 1

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

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

- 1) Highlight the importance of RTI and comment on the implementation of the Act in detail.

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- 2) Write a note on the stakeholders in Right to Information.

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15.5 BRIDGING THE GAP BETWEEN THE RIGHT TO INFORMATION AND ITS ENFORCEABILITY

When the RTI Act, 2005 was enacted, there was a lot of excitement amongst people that they will now be able to question functioning of the government and its instrumentalities. But the perception that this Act alone might be the solution to fight corruption and apathy of Indian Bureaucracy was slowly replaced by skepticism. This view got further impetus, when the incidents of not receiving information, and incidents of harassment of information seekers outnumbered the success stories of the Act. The studies highlighted the discrepancies and challenges in implementation of the RTI Act, that is, issues of pendency of cases, laxity of public authorities in furnishing timely information, lack of adequate number of Public Information Officers, low level of awareness about the RTI Act among masses, etc.

Based on the case studies conducted by the Second Administrative Reforms Commission, 2006, responses of various Ministries to a questionnaire, and interactions with the stakeholders, following difficulties /impediments were noted in the implementation of the RTI Act:

- Complicated system of accepting requests.
- Insistence on demand drafts.
- Difficulties in filing applications by post.
- Varying and often higher rates of application fee.
- Large number of PIOs.

The first Report of Second Administrative Reforms Commission (SARC), 2006 also gave various recommendations towards strengthening the Right to Information Act and its effective implementation. Some of the recommendations were accepted in principle. However, no material changes have been done in the RTI Act, nor any amendment has been made in Official Secret Act, 1923 as per Reports of the SARC (IIPA, 2009). If these recommendations were accepted by the legislative bodies, it would have been very vital in carrying out the aims and objectives of the Preamble of the Act.

The RTI Amendment Act, 2019 came into operation w.e.f. 1st August, 2019. The original Act of 2005 had quantified the tenures, and defined the salaries of the Chief Information Commissioners (CICs) and Information Commissioners (ICs) in terms of the then existing benchmarks. As per 2019 amendment, now the tenure of CICs and ICs is no longer fixed; their terms of appointment, salaries and tenures of CICs and ICs can be decided on a case-to-case basis by the Central Government.

The major problems and gaps have been identified in the implementation of the RTI Act, 2005, which are required to be filled for effective enforceability of the Act in the following areas:

i) Adequate and Efficient Machinery for the Management of Records and Monitoring of RTI Cells

As per Section 4 (2) of the Act, computerisation and scientific record keeping are required to provide "as much information *suo moto* to the public at regular intervals", but most of the public authorities are yet to do so. As such, even where an authority wishes to provide information, it cannot do so due to non-availability of the materials in electronic form. Both the States and Central Governments authorities suffer from the problem of poor record keeping. The records are not computerised and connected through a network all over the country on different systems so that access to such records is facilitated. There is no effective mechanism for the evaluation of information machinery to examine maintenance of records as per Section 4 of the Act. This Section needs to be taken seriously, which makes it incumbent on public authorities to "maintain all records duly catalogued and indexed". For this a culture of self-disclosure must be promoted.

In order to encourage and ensure effective implementation of the Act, an RTI Cell within the General Administration Department (GAD) has been constituted. The Cell is working with meager staff and without adequate resources. These Cells are not effective in dealing with challenging issues of the RTI. There is no system to monitor them. All the appellate authorities and PIOs need training to run these Cells successfully. People need to be made aware of these Cells at the grassroots level. The Civil society organisations need to arrange campaigns for starting communication with villagers. A close watch should be kept at the changing events and emerging problems so that the policy change may be done accordingly. It will also help in trapping false applicants who have vested interests in seeking information.

ii) Proper Appointment and Training of Public Information Officers

In 2005, the NCPRI itself pointed out, "Many ministries and departments of the Government of India seem to have appointed multiple Public Information Officers (PIOs). This results in citizens having to run from office to office seeking out the correct PIO, sometimes in vain."

There also appears to be a lot of confusion about the appointment of Assistant Public Information Officers (APIOs), both at the central and state levels. Under the Act, "every public authority shall designate an officer 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 (Section 5(2))”. However, in many states and in some central departments, APIOs are being appointed in the same offices where the PIOs are already located. There are central public authorities all over the country. Sometimes, people living in the states also seek information from the Central Government and its agencies. For them it becomes difficult to locate all the Central Information Commissioners in Delhi.

Though Section 5 of the RTI Act gives an obligation to the public authority to designate Public Information Officers (PIOs), the Act has not prescribed any criteria or qualification for the PIOs to designate. As a result, there are so many public offices all over the country where the employees of clerical cadre have been designated as PIOs, who are not able to justify their job due to lack of proper training. These designated PIOs do not accept applications as part of their duty nor do they take pains to supply information within the stipulated time. Rather, they discourage information seekers coming from socially, economically or politically disadvantaged sections of the society. Besides, no additional resources including manpower are being provided to the Central and the State agencies to implement the Act.

For enhancing the efficiency of PIOs, a systematic training should be provided to all either working in government sector or in NGOs. Attempts should be made to impart adequate training sessions to the appointed officers to appraise them about the provisions of the Act and about latest judicial rulings. In 2013, detailed guidelines have been issued for all the stakeholders of RTI by the Department of Personnel & Training for making the RTI Act effective.

iii) Strengthening the State Information Commission and Providing

Independence to Appellate Authority

At the state level, there should be an efficient mechanism of decision-making and promotion of RTI culture. Most of the SIC office, function with minimal staff and a single State Information Commissioner. In many states, either Commissions are lying vacant or vacancies are not filled up to their maximum strength. It adversely affects the expeditious disposal of applications. The SICs should not solely depend on state for funds for their working, though a small fund may be allocated to them. For ensuring accountability and transparency, the SICs should submit their annual report in time, which is a mandatory requirement under the Act. For increasing the efficiency, all government officers including PIOs and APIOs must be given adequate training.

“Information Commissioners”, who are responsible for the implementation of the Act, are themselves obstructing the effective functioning of the Act, as most of the Chief Information Commissioners come from the IAS category. At the Central and State government levels, retired bureaucrats are appointed at the Information Commission, which are required to serve as Appellate Authority, independent of the government. But unfortunately, bureaucrats have taken complete control of it. The Second ARC of 2006 recommended amendments in the Central Civil Services Rules and in the Manual of Office Procedure, etc. but no improvement is seen in the working of the Commissions.

iv) No Requirement of Formalities for Filing RTI Application

There is no prescribed format of application for seeking information. The application can be made on plain paper. The applicant should mention the address at which the information is required to be sent. The information seeker is not required to give reasons for seeking information. It has also been reported that various ministries and departments of the government are insisting that they will only accept the specific forms that they have designed for seeking information. The law, however, does not authorise the public authorities to prescribe any such forms. If any format is made mandatory, it will adversely affect the interests of common people.

v) Requirement of Cost-Effective Procedure for Eliciting Information.

On the first reading of the statute it seems that the process of obtaining information is very easy. But in actual practice, it is a very tedious job to get information. Due to non-cooperative attitude of the authorities, it becomes difficult to get proper information, unless there are agencies at the local level to offer guidance. Sometimes information is provided in incomprehensible language, to interpret which technical expertise is required. Development of different set of rules for the Centre and States, create confusion for the public. At district or block level, many PIOs fix timings or days for receiving applications. For information seekers, it is not always possible to reach on designated time and place. Sometimes, it results into waste of time and money if one has to return disappointed. Complaints have also been filed against the PIOs for not giving receipts of applications. Because of all these practical difficulties, right to information becomes a costly affair in terms of time and money. It casts negative effect and dissuades genuine people from seeking information.

Section 6 of the RTI Act does not specify or limit the quantum of information to be gained by an individual or a group of people i.e. Association/Organisation. Further, the RTI Act does not have any provision for imposition of fine or penalty on the applicant for any

misuse of the Act. There is no provision to deal with discouraging annoying and vexatious demands which deprive genuine information seekers. All these have led to an additional issue of large number of the RTI cases pending at various levels.

Technological options can be used to increase the efficiency of Information Commissions. Information can be provided by email or through any other digital means. It will not only reduce the cost but also expedite the things, and pendency of cases will be less.

vi) ***Proper Interpretation of Exemption Clauses***

Access to information under the RTI Act is limited with exemptions. There are restrictions on accessing information pertaining to security, foreign policy, defence, law enforcement and public safety which are quite standard but the RTI Act also excludes cabinet papers, including records of the Council of Ministers and other officials and thereby effectively shields the whole process of decision-making from compulsory disclosure. Section 8(d) and 8(j) are generally worded and are greatly misused due to their wide parameters.

Section 8(d) of the RTI Act, 2005 deals with “non-disclosure of information on the grounds of commercial confidence, trade secrets and intellectual property” and Section 8(j) of the Act “withholds personal and private information of an individual” on the grounds of "Invasion of Privacy". All these exemptions involve wide parameters. Further Section 8(2) provides that the information may be released “if public interest in disclosure outweighs the harm to the protected interests”. The term “public interest” is of wide connotation subject to court’s interpretation and gives an overriding effect to the Act. Such provisions should be scrutinised for minimising the purview of the exemptions.

vii) ***Stipulation of Time Frame for the Disposal of Second Appeal***

No time frame has been attached to the provision of second appeal. Section 6(1) of the Act provides that any person who desires certain information may make a request in writing to the Central Public Information Officer or the State Public Information Officer of the concerned public authority. If the Public Information Officer fails to provide the information within a period of thirty days, then s/he is deemed to have refused to provide the information. According to section 19(1) of the Act, if the person requesting the information either does not receive the PIO’s decision within the stipulated time period of 30 days or is aggrieved by the PIO’s decision, s/he can prefer an appeal (first appeal) to an officer who is senior in rank to the PIO in the concerned public authority. Section 19(6) stipulates that such a first appeal must be disposed of within a period of 30 days of receipt of the appeal or within

an extended period not more than 45 days of filing of the appeal. Section 19(3) provides that a second appeal may be preferred against the decision rendered under section 19(6) before the Central Information Commission or the State Information Commission. Unlike the first appeal, there is no stipulated time frame for decision by the CIC or the SIC of a second appeal under Section 19(3) of the Act. A disappointed appellant does not have option of moving the court against the PIOs. S/he may only approach the Information Commission, which may take its own time to dispose of the appeal. Consequently, people have no option but to wait for the decision of the CIC or the SIC before they can take judicial action in the matter (Khosla&Khosla, 2009).

The only recourse in such a situation is to send reminders to the CIC and the SIC and hope for an early resolution of the appeal. This approach is inadequate and the RTI Act needs to be amended to address this lacuna in the law. In 2016, the Government of India introduced the RTI Amendment Bill, 2016 in the Lok Sabha specifying time for the disposal of Second Appeal, but the proposed amendment failed.

viii) RTI Awareness to be Created Amongst Common Men

Most of the people are not well acquainted with the provisions of the RTI Act. They do not know how to file an RTI application, nor do they know the authorities to whom application is to be addressed. Poor education standard is one of the basic impediments in accessing information. It is well established fact that awareness about RTI is more in educated people than amongst uneducated people. “A study of Public Affairs Centre conducted in Karnataka revealed that only 2% of people in rural areas were aware of the right to information as high number of applications were filed usually with urban departments/municipalities” (Kumar, 2007). Besides, “peoples’ excessive reliance and dependence on traditional justice seeking system of the nation, somewhere prohibits effective functioning of the Act” (Kewlani, 2009).

Section 26 of the Act states that government should educate the masses about the RTI Act, but this is not actually happening effectively. In such a situation, civil society actors and grassroots activists should come forward to spread the message of RTI at the local level. For this, the RTI cells may co-ordinate with NGOs and can use the resources available under various programmes for generating awareness through campaigns. Mass media campaigns may be launched to make masses aware of this right. Awareness can also be created at local levels through Panchayats. Universities and Colleges should start a short course on the RTI under Choice Based Credit System, so as to create awareness of the RTI amongst non-law disciplines. The RTI education should be widespread so that it may not remain on statute book only but may become a reality.

Check Your Progress 2

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

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

- 1) Examine the problems and gaps, which have been responsible for lack of effective implementation of the RTI Act, 2005.

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- 2) Discuss the necessary measures for effective implementation of the RTI Act.

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15.6 CONCLUSION

The effective implementation of the Right to Information Act, 2005 will contribute in promoting transparency and accountability in the functioning of government institutions. Furthermore, it will be an effective tool for providing information to the citizens. Thereby, the RTI will create congenial environment for capacity building of the citizens so that they can actively participate in the development process. In totality, the RTI Act ushers in good governance. The law is very comprehensive and applicable to the government at all levels i.e., Union, State and Local levels.

Since its enactment in 2005, the Right to Information Act has been lauded as a significant measure for the achievement of a more accountable and transparent government and bureaucracy. However infrastructural weaknesses and the mindset problems threaten the future of the RTI. Weaker sections of society are hesitant in filing RTI applications because sometimes it involves submission of application fee in cash and the person has to be physically present in front of the PIO. Hence, usage of the RTI is limited to middle class and social activists only.

The solution lies in empowering the ordinary people of the country by which the nation can progress to its greatness. By the enactment of the RTI Act, the

government has taken a small step but a significant one towards that goal. The government has to take keen interest for the proper implementation of the Act and strive towards creating awareness among the masses. Apart from this, the government should soften the tough procedures so that it becomes easy for the applicants to retrieve information. Most importantly, the government should think towards scrapping off the fees at the time of filing applications, which was also recommended by a parliamentary committee.

The need of the hour is to make the Act accessible at the grassroots level as it has not reached the common man yet and is still utilised by the creamy layer of the society. Also, the accountability of the bureaucrats should be duly verified. The bureaucrats should make sure that the applications received should be precise and clear and try to minimise the misuse of the Act. The gap between government and citizens should be lessened through effective implementation of the RTI Act. Once this is done, the RTI Act would be viewed as being properly and fully utilised.

Researches play a vital role in developing institutions. The RTI jurisprudence may be further developed if educational institutions and other developmental authorities, both national and international, take up empirical research projects in the context of the RTI Act, so as to make it effective.

15.7 GLOSSARY

Official Secret: it refers to any information, the disclosure of which is likely to prejudicially affect the sovereignty and integrity of India, the security of State, friendly relations with foreign countries, economic, commercial, scientific and technological matters regarding national security and includes any secret code, password, sketch plan, model, article, note or document regarding a prohibited place.

Official Secrets Act, 1923: The Official Secrets Act was first enacted in 1923 and was retained after Independence. The law, applicable to government servants and citizens, provides the framework for dealing with espionage, sedition, and other potential threats to the integrity of the nation. The law makes spying, sharing “secret” information, unauthorised use of uniforms, withholding information, interference with the armed forces in prohibited/restricted areas, among others, punishable offences. If guilty, a person may get up to 14 years’ imprisonment, a fine, or both. The information could be any reference to a place belonging to or occupied by the government, documents, photographs, sketches, maps, plans, models, official codes or passwords.

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15.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Despite all its merits, the RTI Act has not reached to the masses due to complex procedure and closed mindset of the PIOs. Bureaucracy under the RTI Act is inaccessible and indifferent to common citizens, and is more bothered about adherence to the procedures, rules and regulations. Citizens have been treated as passive recipients only. Refer to Section 15.2 and 15.4, for more details.
- 2) Your answer should include the following points:
 - In a country every individual and institution are stakeholders in the institution of the right to information. Stakeholders include public authorities, bureaucracy, media, corporate sector, political executive and statutory authorities, the Central Information Commission and the State Information Commissions have keen interest in upholding the ideals of the RTI Act. For details, refer Section 15.3

Check Your Progress 2

- 1) **Your answer should include the following points:**
 - There are many factors like lack of infrastructure, lack of citizens' participation in decision-making process, bureaucratic mentality,

etc., which have adversely affected the effective use and implementation of the Right to Information Act. Refer Section 15.5

- 2) Your answer should include the following points:
- Less bureaucratic approach, awareness programmes for the RTI seekers, strengthening procedure by making it less complicated, enhancing capacity of the PIOs, promoting the RTI cells, use of technology, introducing helpline numbers, efficient record management and promoting culture of suo motu disclosure will go a long way in making enforcement of the RTI Act effective. Refer Section 15.5



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