SCHEME OF PRESENTATION

• Introduction
  • History of the FOI Campaign
  • International Documents on FOI
• Why Right to Information?
• Earlier cases on RTI
• The Progressive Indian States
• FOIA, 2002 & RTI Act, 2005
• Information Then ..... and Now
• Conclusion
Introduction

• **Knowledge is Power**

• **The Essence of Democracy**
  - Continuous Increase in people’s participation in democracy

• **True test of Democracy**
  - Transparency
  - Accountability
  - Responsiveness

• **Logical Corollary**
  - Legislation for freedom of information
History of the FOI Campaign

- 240 years ago, Sweden passed the first freedom of information law in the world in 1766, principally sponsored by a Finnish clergyman Anders Chydenius, who had been inspired by the humanist Confucian philosophy...

- The origins of the American Freedom Of Information Act (FOIA) come from the activism of Democratic Congressman John Moss, who chaired the special sub committee of public information.

- U.S.A. passed the FOIA in 1966.
Chronology of FOI Laws in the World

- Sweden 1766 (Pioneer)
- Colombia 1888
- Finland 1951
- U.S.A 1966
- Denmark, Norway 1970
- France 1978
- Australia, New Zealand 1982
- Canada 1983

-So far, 68 countries have passed FOI laws.
International Documents on FOI

- United Nations General Assembly, in its first session in 1946, adopted Resolution 59 (I):

  “Freedom of information is a fundamental human right and . . . the touchstone of all the freedoms to which the UN is consecrated”
International Documents on FOI

• *Universal Declaration of Human Rights, 1948 (Art. 19)*

  “Recognises Freedom of Expression including Freedom of Information and Free Press - a fundamental human right. Freedom of Expression includes the right to seek, receive and impart information and right to access information held by public authorities”
International Documents on FOI

• The European Convention on Human Rights, 1950
• The International Covenant on Civil and Political Rights, 1966 (Art. 19 (2))
• American Convention on Human Rights, 1969
• The UNESCO Declaration, 1978
• The African Charter on Human and People’s Rights, 1981
• The United Nations Convention on the Right of the Child, 1989
• The Rio Declaration on Environment and Development, 1992
International Documents on FOI

- World Conference on Human Rights, 1993
- United Nations Convention against Corruption, 2003
- Civil Society Declaration to the World Summit, 2003
- The European Union
- The Commonwealth
- Organization of American States
- International Conference of Information Commissioners (ICIC - 2007)
Why Right to Information?

Information is Key

Democratic Process and Good Governance

Poverty Eradication and Human Development

Realisation of Human Rights
Constitutional Base

• Article 14: Right to Equality- Equal treatment before law

• Article 19(1) (a): Right to Freedom-freedom of Speech and Expression

• Article 21: Protection of Life & Personal Liberty
Earlier cases on RTI

- **Bennett Coleman v. Union of India**, AIR 1973 SC 60.
- **People’s Union for Civil Liberties v. UOI**, 2004 (2) SCC 476.
- **S.P. Gupta v. Union of India**, AIR 1975 SC 685
Earlier cases (Contd.)

- In *Bennett Coleman*, the right to information was held to be included within the right to freedom of speech and expression guaranteed by Article 19 (1) (a).

  • In *Raj Narain*, Mr. Justice Mathew explicitly stated:

    It is not in the interest of the public to ‘cover with a veil of secrecy the common routine business … the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption
Earlier cases (Contd.)

• In *Secretary, Ministry of I & B, Government of India v Cricket Association of Bengal*, the Supreme Court held that: the right to impart and receive information from electronic media was included in the freedom of speech.

• In *People’s Union for Civil Liberties v. UOI*, the right to information was further elevated to the status of a human right, necessary for making governance transparent and accountable. It was also emphasized that governance must be participatory.
Earlier cases (Contd.)

• **S.P. Gupta v. Union of India**
  - The citizens’ right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world.”

• **LCI of India v. Manubhai D Shah**
  - LIC must function in the best interest of the community and the community is thus entitled to know as to whether LIC is functioning as per statute or not.
Right to Information is a Fundamental Right

It is a part of the Fundamental Right to Freedom of Speech and Expression recognised in various Supreme Court decisions.

IT IS directly linked to the Right to Life - the Supreme Court has widened the definition of Right to Life to include the right to food, health, education, liberty, etc. denial of information is a denial of these rights.
The Progressive Indian States

1. Tamil Nadu Right to Information Act, 1997
2. Goa Right to Information Act, 1997
3. Rajasthan Right to Information Act, 2000
4. Karnataka Right to Information Act, 2000
5. Delhi Right to Information Act, 2001
6. Assam Right to Information Act, 2001
7. Maharashtra Right to Information Act, 2002
Developments on RTI

- First political commitment to the citizen's right to information came up on the eve of the Lok Sabha Elections in 1977 as a corollary to public resentment against suppression of information, press censorship and abuse of authority during the Internal Emergency of 1975-77.

- Election manifesto of the 1977 - the Janata Party promised "an open government"

- In 1977 Janata Party Government headed by Morarji Desai constituted a working group comprising officials from the Cabinet Secretariat and the Ministries of Home Affairs, Finance and Defence, to ascertain working of the Official Secrets Act, 1923
Developments on RTI (Contd.)

- The Committee recommend that the OSA, 1923 should be retained without change.
- Bofors Issue in 1989
- 1989 Lok Sabha Election Manifesto, the National Front committed itself to "open government", and "people's right to information which shall be guaranteed through constitutional provisions".
Developments on RTI (Contd.)

- 1990 - Prime Minister V.P Singh heading the national front government stresses on the importance of Right to Information as a legislative right.

- Mazdoor Kissan Shakti Sanghatan Movement, Rajasthan (Mrs Aruna Roy)- May 1990- Ensured that minimum wages were paid to all the labourors on developmental works, Jan sunwai

- Information Ministers’ Conference-1990

- Bilaspur (MP), September 1996- Harsh Mandar- PDS and employment exchange registers made open to Public
Developments on RTI (Contd.)

• Prime Minister V.P. Singh, in his first broadcast to the nation in December 1989 said, "We will have to increase access to information"

  1994 - Mazdoor Kisan Shakti Sanghatan (MKSS) started a grassroots campaign for right to information – demanding information concerning development works in rural Rajasthan. This movement grew and the campaign resulted in the government of Rajasthan enacting a law on Right to Information in 2000.

  1995- A draft was prepared by social activists, civil servants and lawyers at Lal Bahadur Sastri National Academy of Administration, Mussoorie
Developments on RTI (Contd.)

- Centre for Environment and Research prepared another draft Bill recommending repeal of OSA, 1923
- 1996 - Press Council of India under guidance of its Chairman Justice P.B Sawant drafted a law
- Chief Minister’s Conference at Delhi on 4th May, 1997 on Effective and Responsive Govt.
- PCI draft was later updated and changed at a workshop and renamed “The Press Council –NIRD Freedom of Information Act, 1997.”
Developments on RTI (Contd.)

• 1997 - The Working group appointed by the United Front Government under the Chairmanship of Mr. H.D Shourie drafted a law called the Freedom of Information Bill, 1997.

• Submitted its Report and Provisions of the Bill in May, 1997

• 1998-The Prime Minister Shri Vajpayee announces that a Law on right to information shall be enacted soon.

• Administrative Order of Shri Ram Jethmalani – 1999- PIL against the order
Developments on RTI (Contd.)

- Tehri Gadhwal- Bhilangana block – NGO- Chetana- Open enquiry
- Parivartan (Arvind Kejriwal) - *Jan sunwai* in Delhi - Jan 2000
- After some debate, it was referred to the Parliamentary Standing Committee on Home Affairs for review.
Developments on RTI (Contd.)

- Anna Hazare – 2001- Agitation against State Government RTI Act, 2000
- Seminar on RTI and Good Governance at LBSNAA, Mussoorie, 2001
- Mr H D Shouri - SC intervention of Nov. 2002.
- 06.01.2003 the Bill was passed by the Parliament as the Freedom of Information Act 2002. (FOIA, 2002)- notified in Gazette in Jan 2003.
Developments on RTI (Contd.)

• 2002 FOIA passed - but not operationalised
• PIL was filed by *CPIL and other v UOI* - SC set a deadline to frame rules and operations of provisions of the law
• 2002 August 12th DOPT of MPPG &P finally released draft rules under the Act rules issued more than 18 months of the Act
The United Progressive Alliance (UPA) Government at the Centre, which came into power in 2004, set up a National Advisory Council (NAC).

The NAC suggested important changes to be incorporated in the FOI Act. (sent a list of 36 amendments to the PM in August, 2004)

These suggestions were examined by the Government, which decided to make the FOI Act more progressive, participatory and meaningful.
Developments on RTI (Contd.)

• 16th Nov. 2004 SC issued notice to the Centre & the States on PIL seeking to know the Govt. how long it will take to enforce FOIA, 2002

• The UPA Government decided to repeal the FOI Act, and enacted a new legislation, the Right to Information Act, 2005 (RTIA)
Developments on RTI (Contd.)

- **23.12.2004:** The RTI Bill introduced in the Loksabha
- **11.05.2005:** Loksabha passed the RTI Bill
- **12.05.2005:** Rajyasabha passed the RTI Bill
- **15.06.2005:** The President gave assent to the Act; few provisions came into force
- **21.06.2005:** RTIA published in the Gazette of India, Part II, Sec.1 Ext.No.25
- **12.10.2005:** RTIA came fully into force
The Progressive Indian States

- Tamil Nadu - 1997
- Goa - 1997
- Rajasthan - 2000
- Karnataka - 2000
- New Delhi - 2001
- Maharashtra - 2002
- Madhya Pradesh - 2003
- Chhattisgarh: no law but executive orders in departments to make information available to people (Implementation of MP exec orders)
- Orissa: Executive order with respect to Panchayat matters on FOI.
The RTI Act 2005

Came into effect from October 12, 2005

• Covers Central, state and local governments, and
  • all bodies owned, controlled or substantially financed;
  • non-government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government (2(h))
• Covers executive, judiciary and legislature (2(e))
• Includes information relating to private body which can be accessed by under any other law for the time being in force (2(f))
Right to Information: 
*Key Concepts*

- Transparency & Accountability in the working of every public authority
- The right of any citizen of India to request access to information and the corresponding duty of Govt. to meet the request, except the exempted information (Secs. 6 to 8)
- The duty of Govt. to pro-actively make available key information to all (Sec 4).
- A responsibility on all sections: citizenry, NGOs, Media
What is Information?

- Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force - Section 2(f)
What does Right to Information mean?

- It includes the right to -
  i. inspect works, documents, records.
  ii. take notes, extracts or certified copies of documents or records.
  iii. take certified samples of material.
  iv. obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.[S.2(j)]
Obligations

S 4 (1) Every public authority shall -
(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.
The RTI Act 2005

• Came into effect from October 12, 2005
• Covers Central, state and local governments, and
  • all bodies owned, controlled or substantially financed;
  • non-government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government (2(h))
• Covers executive, judiciary and legislature (2(e))
• Includes information relating to private body which can be accessed by under any other law for the time being in force (2(f))
Right to Information: Key Concepts

- Transparency & Accountability in the working of every public authority
- The right of any citizen of India to request access to information and the corresponding duty of Govt. to meet the request, except the exempted information (Secs. 6 to 8)
- The duty of Govt. to pro-actively make available key information to all (Sec 4).
- A responsibility on all sections: citizenry, NGOs, Media
What is Information?

• Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force -Section 2(f)
What does Right to Information mean?

- It includes the right to -
  i. inspect works, documents, records.
  ii. take notes, extracts or certified copies of documents or records.
  iii. take certified samples of material.
  iv. obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.[S.2(j)]
Obligations

S 4 (1) Every public authority shall -
(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.
What is a Public Authority?

- "public authority" means any authority or body or institution of self-government established or constituted—
  - (a) by or under the Constitution;
  - (b) by any other law made by Parliament;
  - (c) by any other law made by State Legislature;
  - (d) by notification issued or order made by the appropriate Government, and includes any—
    - (i) body owned, controlled or substantially financed;
    - (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;
The RTI Act 2005 - Processes

- Application to be submitted in writing or electronically, with prescribed fee, to Public Information Officer (PIO).
- Envisages PIO in each department/agency to receive requests and provide information. Assistant PIO at sub-district levels to receive applications/appeals/complaints. Forward to appropriate PIO. These will be existing officers.
- Information to be provided within 30 days. 48 hours where life or liberty is involved. 35 days where request is given to Asst. PIO, 40 days where third party is involved and 45 days for human rights violation information from listed security/intelligence agencies.
- Time taken for calculation and intimation of fees excluded from the time frame.
- No action on application for 30 days is a deemed refusal.
- No fee for delayed response
What is not open to disclosure?

- The following is exempt from disclosure [S.8)]
  - information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence
  - information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

Contd
What is not open to disclosure?  
Contd.

- information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- information including **commercial confidence, trade secrets or intellectual property**, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- information received in confidence from foreign Government.
What is not open to disclosure?

Contd.

• information which would impede the process of investigation or apprehension or prosecution of offenders;
• cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
• information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;
• Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
RTI Act 2005-Exemptions, contd.

- Infringes copyright, except of the state.
- Where practicable, part of record can be released.
- Intelligence and security agencies exempt (S 24)– except cases of corruption and human rights violation
- Third party information to be released after giving notice to third party
- Most exempt information to be released after 20 years (with some exceptions).
- Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.
- Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions (a to i), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests.
Central Information Commission: What can I complain about?

- The Central Information Commission is an autonomous body set up to inquire into complaints received from citizens.

- You can complain that you have been refused access to information. You can also complain about how the public authority has handled your request, for instance:
  
  + failure to respond to your request within 30 working days (or failure to explain why an extension to the 45 days is needed)
  + failure to give you proper advice and help within the stipulated time
  + failure to give information in the form in which you asked for it
  + failure to properly explain reasons for refusing your request, for instance if the public authority believes that giving you information would harm a criminal investigation.
What information does the CIC need?

- To deal with complaint promptly, send the following details to CIC:
  - name and address of the appellant;
  - name and address of the Central Public Information Officer against the decision of whom the appeal is preferred;
  - particulars of the order including number, if any, against which the appeal is preferred;
  - brief facts leading to the appeal
What information does the CIC need?

Contd....

• if the appeal is preferred against deemed refusal, the particulars of the application, including number and date and name and address of the Central Public Information Officer to whom the application was

• prayer of relief sought;

• grounds for the prayer or relief; verification by the appellant; and

• any other information which the Commission may deem necessary for deciding the appeal
• **Penalties**

  imposable by Information Commission on PIO or officer asked to assist PIO

  For unreasonable delay – Rs 250 per day up to Rs 25,000

  For illegitimate refusal to accept application, malafide denial, knowingly providing false information, destruction of information, etc. – up to Rs. 25,000 fine

  Recommendation for departmental action for persistent or serious violations

  However, no criminal liability

• **Immunity for actions done in good faith (S. 21).**
RTI Act 2005 - Access

- Universal Access – especially to the Poor
  - Fee at a reasonable level – though quantum not specified. No fee for BPL.
  - Assistant Public Information Officers at sub-district levels to facilitate filing of applications/appeals
  - No need to specify reason for seeking information or other personal details
  - Provision to reduce oral requests into writing
  - Provision to provide all required assistance, including to disabled persons.
  - Information to be provided in local languages
  - Provision for damages
  - Open only to citizens of India.
• Provision for damages
Open only to citizens of India.
<table>
<thead>
<tr>
<th>Freedom of Information Act, 2002</th>
<th>&amp;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to Information Act, 2005</td>
<td></td>
</tr>
</tbody>
</table>
“Right to Information a potent instrument for good governance”

- the Prime Minister Dr. Manmohan Singh
“It is the common man or common woman who is the fulcrum of our democratic system, as an observer, as the seeker of information, as the one who asks relevant questions, as the analyst and as the final judge of our performance.”

-the Prime Minister Dr. Manmohan Singh
It is a commitment

“WE, THE PEOPLE OF INDIA
resolved to secure ourselves . . .
LIBERTY of thought, expression . . .
through the Preamble to
our Constitution

66 years ago”
Constitutional clauses are difficult to enforce directly without the help of legal statutes, because each and every time, we cannot approach the Supreme Court or High Courts to enforce our fundamental rights.

Hence, the Right to Information Act 2005 establishes the necessary practical regime of right to information envisaged in the Act, 2005.
Aims

• To set out the practical regime of right to information for citizens
• To secure access to information under control of Public Authorities
• To promote transparency and accountability
• To curtail corruption
Ultimate Goal of RTI

- Pillar of Democracy
- Leads to Good Governance
- Reduce corruption by way of Transparency in the Administration
- Ensure people’s participation
- Social Audit
- Will increase employment opportunities - Poverty alleviation & improvement in quality of life.
- Curb fatalism and blind faith
# Information

## Then..... and Now

<table>
<thead>
<tr>
<th>Secrecy</th>
<th>Transparency</th>
</tr>
</thead>
<tbody>
<tr>
<td>a pillar of government functioning</td>
<td>a pre-condition to good governance</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Information</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>given at discretion</td>
<td>a legally enforceable right</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No legal remedy for non disclosure</th>
<th>Penalty for non-disclosure</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>All info is secret unless there is a strong reason for releasing it.</th>
<th>All info is available unless there are strong reasons for denying it.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>State</th>
<th>Citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td>as locus of control</td>
<td>as sovereign</td>
</tr>
</tbody>
</table>
OFFICIAL SECRETS ACT 1923

THEN

NOW
Available Information & Common Man

Change

Before

After
Now that You have a Right to Information!

Kindly Campaign for Freedom of Information
The Real ‘Swaraj’ will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused. – Mahatma Gandhi
Service with you in mind
THANK YOU