CHAPTER – VIII

CONCLUSION AND SUGGESTIONS

8.1: Test of Hypothesis
8.2: Conclusion and findings of the study
8.3: Suggestions
8.1: Test of Hypothesis

Test of Hypothesis H₁ : The right to information is essential for the exercise of all other rights.

There are two types of right available to the public – one is fundamental right and other is legal rights. Fundamental rights have been given by Indian constitution and legal rights have been given through different legislations passed by Indian and state legislation.

Right to know or get information is available under Indian constitution as well as in different legislations as passed by central and state government of the country which is obvious from the study of chapter III and IV. In these chapters relationship of RTI Act 2005 with Indian constitution and other legislations has been analyzed. On the basis of this analysis, it has been found that Indian constitution Article 19(1) provides a right to use the best means of imparting and receiving information. Right to information is not confined to Article 19(1)(a) but is situated in Article 14 and Article 21 also. The right to information has not always a linkage with the freedom of speech. If a citizen gets information, certainly his capacity to speak will be enhanced. But many a time, he needs information to know the use or discretionary powers by administrative authority which is not made available as per the provisions of the constitution. Hence, the provisions made in Indian constitution are not effective and explicit in context of RTI.

Not only that but all other legislations as analyzed in context of RTI denote that every legislation has some provisions in giving some right to the public to get information. These rights are not properly exercised by the public due to discretionary powers of the public authority. Therefore, RTI Act 2005 was enacted to supplement and compliment these provisions. Thus, it has been proved that all rights of a citizen cannot be entertained even under RTI Act but more than ninety percent of the rights are entertained under RTI which accepts this hypothesis that RTI Act is essential for the exercise of all other rights.
The study of all these legislation shows that in each and every legislation there is a provision of right to know but these provisions are not adequate and sufficient but RTI Act, 2005 includes all provisions which make these legislations more effective in the area of right to know and right to inform. Hence, RTI Act is essential for the exercise of all other rights which is proved and this hypothesis said to be accepted through this study. Without effective implementation of RTI Act, 2005, the provisions of right to inform under other legislations cannot be effectively executed in true spirit.

Test of hypothesis; $H_2$ & $H_3$:

$H_2$: The lack of infrastructure in the government machinery and mindset of public officials are main problems in the implementation of the recent legislation RTI Act, 2005 regarding proactive disclosure of information.

$H_3$: RTI Act 2005 is more effective in checking misuse of Administrative discretion in India.

The study between 2006-2015 (Table 5.5) Conducted for some related departments of central Government and state Government located in Patna, Bihar Such as Police, Railway, Income Tax, Defence, Registration, Post, Forest, FCI and Educational institutions clearly shows that % of disclosure has been between 28 to 36% and the rate of non disclosure was between 64% to 72%. This survey indicates that the rate of disclosure of information has been very low during the period of the study. This further indicates that rate of non disclosure of information by public Authority has been very high which is the proof of the fact that administrative discretion has been greater and more influential during the period of the study. When further survey was conducted to know the reason of poor disclosure of information, a number of problems have been identified in which infrastructural problem and negative mindset of public authority were found more crucial.
The lack of Infrastructure in the Govt. Machinery has been measured on the basis of mechanism available for awaring people about RTI, knowledge level about RTI, standard form for RTI application, Modes of submission of RTI application, overall Infrastructure requirement reported by PIOs, Record Management system, Availability of Trained PIOs and Publication of annual report by CIC & SIC.

The study clearly indicates that there is no infrastructure available for public awareness about RTI in our country. The male awareness is 26%, female 13%, urban 33%, Rural 13%, General 27% and other categories 14%. This indicates that public awareness is very poor in the country. The knowledge level of RTI found less than 50% throughout the country it is only 40% in Bihar.

The study shows that there is no Standard form for RTI application as developed by public authority. The modes of submission of RTI application through email is very less, only manual application is filed through PIOs, Available infrastructure is only 16% of total requirement which denotes that 84% of infrastructure is required more for effective implementation of RTI. There is no additional staff available for discharging RTI work as reported by more than 90% of PIOs. Record management system is also found poor as reported by more than 80% of RTI Activist as a cause of delay in collection of information. There is a huge scarcity of trained RTI personnel which is obvious from the survey that only 40% of PIOs are found trained in the country. There is no regular publication of Annual reports. Nine states of the country did not start publication of annual reports as yet. No State including CIC has published annual report after 2012.

So far mind set of public officials is concerned; it is found from the study that 59% of the respondents ranked the courteousness of the PIOs as poor or just fair. No assistance was available for filing RTI application as reported by respondents and the result is that 51% pendency level was found for more than twelve months and overall percentage was 49% during the period of study.
This proves that lack of infrastructure in the government machinery and mindset of public officials have been the main hurdles in the implementation of recent legislation RTI Act, 2005 regarding proactive information. Hence, this hypothesis is said to be accepted from this study.

*When this null hypothesis (H₂) is accepted, obviously other alternative hypothesis (H₃) will be rejected.* Thus, the study proves that RTI Act, 2005 has not been effective in checking misuse of Administrative discretion in India because even today rate of non disclosure of information in most of the Departments of Central and state Government has been much higher. Therefore, the finding of the study in context of test of hypothesis is:

H₁ - Accepted  
H₂ - Accepted  
H₃ - Rejected

8.2: Conclusion and findings of the study

Introduction

After going through the whole research, the researcher comes to the conclusion that RTI Act came into existence in 2005 after a long journey by repealing the freedom of information Act, 2002 in order to remove corruption and mal practices and promote transparency in the decision making process of the Govt. However, this law was started first time in Tamil Nadu. The whole contents of this act has been divided into six chapters such as preliminary, obligation of public authority, The CIC, The SIC, Powers and functions of Information Commission and Miscellaneous. The disclosure of information by public authority in public interest has been explained in RTI Act, 2005 with certain exemptions where disclosure is not permissible in greater public interest and this promotes administrative discretionary power of public authority. There are thirteen objectives of the study which have been analyzed in different chapters of this thesis. Chapter II analyses the objective number I, Chapter IV
analyses objective number VII, chapter V highlights objective number 2, 3, 6, 9, 10 and 11, chapter VI goes to state objective number 3, 4 and 5, chapter VII states objective number 8 and 12 and chapter VIII highlights the last objective of the study in detail.

Hypothesis has already been tested in chapter IV, V, & VI. Primary and secondary data have been used for the study. Statistical tools such as mean score, graph diagramme etc. have also been used for analysis and interpretation of data. The study has been made in context of the whole country where selected Central and State govt. organizations and some leading States representing different parts of the country have been taken into consideration for the study. The period of the study is between 2005 to 2015. The whole thesis has been divided into eight chapters.

Chapter II

This chapter goes to highlight the evolution and growth of RTI Act at international level. The development of RTI in context of human right declaration by UNO has been explained in detail. RTI in context of proactive disclosure of information through regional association of countries has also been analyzed in detail. Every country of this world promotes RTI. Countries across the globe have recorded this commitment to transparency in both binding human rights instrument and in the declaratory statement. The study of this chapter concludes that eighty Nations out of 193 Nations of the world have access to information laws.

Some leading regional association of countries like Asia pacific The common wealth, The African Union, The organization of American States and the council of Europe, European union have the provisions of information laws and they believe in full disclosure of the information. The study concludes that four countries in Africa, seventeen Countries in America, nineteen countries in Asia, 37 countries in Europe and three countries in the Oceania have legislations pertaining to freedom of information.
In chapter III comparative study has been made between RTI Act, 2005 with freedom of Information Act, 2002 as well as with other legislations of the country. The study concludes that freedom of information Act, 2002 was enacted to remove the deficiencies of all other Acts of the country such as India evidence Act 1872, Factories Act 1948, Representation of people Act 1950, Public Records Act 1993, Official secret Act 1923. All these Acts promoted the survey of right to information and this also admitted by different judgments of the Supreme court of India where right to information and disclosure of information have been given weightage and on the basis of that freedom of information Act came into existence. Different states have also taken initiative for framing the law on Right to Information.

The study further concludes that freedom of information Act, 2002 has several weaknesses in which most vital weakness was that there was no penalty clause there. There study concludes that the freedom of information Act was weak and inadequate in context to its suo motu disclosure policy. This short comings has been totally removed through the enactment of the right to information Act, 2005. Thus, a proactive disclosure by public authority has been made more effective through RTI Act, 2005 in comparison to freedom of information Act, 2002.

Thus, the Right to information Act, 2005 has dismantled the culture of secrecy by changing the mindset of the bureaucrats and political leaders in order to promote transparency and accountability in the working of the public bodies and to contain the discouragement of corruption which are critical for ensuring good governance and developments in country.

The chapter IV highlights the relationship between RTI and with constitution as well as with other legislations of the country.

The study of this unit concludes that there are several provisions under constitution and other legislations which go to justify the transparency participatory democracy, accountability in respect of right to information but effective implementation could not be found successful. However, it has been
found effective under RTI Act, 2005 Exemptions or restrictions on disclosure and administrative discretion have also been analyzed in the light of RTI which ultimately proves that with effective implementation of RTI Act proactive disclosure of information will be more and administrative discretion will be minimum.

Chapter V discusses the implementation of proactive disclosure by public authority during the period of the study. The study concludes that by keeping in view public interest and greater public interest every public should provide as much information to the public through different means of communications so that the public have minimum need to use this act to obtain information. There is no doubt that proactive disclosure is much beneficial for the public as well as for the public authority.

International approach on proactive disclosure of information has also been found favorable from the study. The guiding principles for proactive disclosure also advocates for greater transparency and accountability. The study finds that for more participation in democracy and effective implementation of proactive disclosure, it is necessary that list of exemptions under section 8 should be limited. However due to some serious problems relating to infrastructure and negative mindset of PIOs. The rate of disclosure has been low and non disclosure % has been more which shows that until or unless administrative discretion will be lower, implementation of RTI can never said to be effective one in the country.

It is found from the study of chapter VI that power and functions of Information Commissions are sufficient but their execution is not so effective in the case of State Information Commission. CIC’s rate of disposal of appeals and complaints has been 70% whereas rate of disposal of SIC has been 30 to 35%. Overall performance of the rate of disposal of RTI application received has been found satisfactory during the period. The study finds that almost all the States are performing well in disposing RTI applications during the period but so far the publication of annual reports is concerned nine states did not
publish annual report as yet and no annual report has been published by CIC and SIC after 2012. The rate of disposal by public authorities is 92% but it is found from the study of this unit that proactive disclosure of information clause has not been clearly followed by the public authority. Hence, working of CIC and SIC is required to be improved.

The role of judiciary in respect of RTI Act, 2005 has been examined from the different aspects in chapter VII. The study concludes that the earlier role of judiciary was not so clear about proactive disclosure of information especially in respect of appointment, transfer and disclosure of assets but presently the observation of the Supreme Court clearly supports the proactive disclosure. The role of judiciary has been very positive in realizing the importance of RTI which has been proved with the various judgments given by the court relating to print and electronic media, commercial advertisement, Election procedure and prisoner's interview. In all these judgments, the court advocates transparency & accountability through proactive disclosure except few exemptions which are affecting the larger public interest.

8.3: Suggestions

After critical examination and analyzing the each and every aspect of RTI Act, 2005 in the light of proactive disclosure of information, the following suggestions are offered to make this act more transparent and accountable to the general public.

1. The concept of open Government directly emanates from the right to know, which seems to be implicit in the freedom of speech and expression. An open society is the new democratic culture towards which every liberal democracy is moving and India should be no exception. No democratic Government can survive without accountability and the basic postulate of accountability is that people should have information about functioning of the Government. It should be well recognized by the law that every member of the public has a basic
requirement to receive information and the government has a corresponding obligation to disclose information. To the possible extent all laws should be drafted with a clear presumption in favour of people’s right to access all information. It should be the primary obligation of the public bodies to disclose maximum amount of information held by them. Moreover, right to access to official/government held information should be a wide right. The exception to the rule of giving information should be limited and specific. Preference should be given to the disclosure of information.

2. The real efficacy of the right to information depends upon the affordability of information and earlier responses by the government officials. There should be a clear, simple and uncomplicated procedure prescribed for the information law. It should always be remembered by the government officials that in an open Government system, public business is the people’s business. Therefore, the approach of the government should be in favour of disclosure by setting aside the culture of secrecy. In an open Government system, disclosure is the norm and secrecy is an exception. There should be a political will to make an open Government system. Politicians can themselves be part of the change in the culture of secrecy and improve their own credibility through involvement with initiatives to promote and implement the right to access information. The need of the hour for the government is to realize the undeniable importance of the freedom to information. It must enact proper legislation that enshrines this right. The problem is not what the law says, but the extent to which it is being implemented. In this regard, civil society organizations campaigning to promote the right to information create a culture of right to information. This culture should develop willingness of public officials to release information and the readiness of the public to file requests. Intensive legal education and freedom of information campaigns need to be undertaken to raise
awareness amongst the population. To promote openness and transparency in the government, it is also essential that all the laws, which are inconsistent with transparency, like old official secret and certain civil service rules, should be repealed and subjected to the Right to Information Act, 2005, so that openness can be developed. It is pertinent to note that continued existence of restrictive legislations, i.e., law of secrecy creates confusion and makes it hard for the public authorities to know exactly how much to disclose under the new access law.

3. In making the Government transparent and open, which is one of the essential requirements, the law should provide protection to public officials (whistle blowers) who give certain exempted information where it is necessary to do so in overwhelming public interest. Further, the public interest disclosure terms should be designed to encourage reporting of wrong doing and provide protection from subsequent victimization.

4. One of the essential pre requisite for an open Government system is that all its organs, i.e., Legislature, Executive and Judiciary should be equally accountable before the general public. When judges function in open courts and their judgments are public documents, there should be no reason for the Judiciary to seek exemption from the disclosure of information for their administrative matters. Besides, there should be accountability of private bodies, like corporations and companies, etc. Keeping in view the larger public interest and the cases of violations of environment laws, community and human right violations, these bodies should be made transparent and accountable to the citizens of the country.

5. In order to build an open, transparent and RTI culture, the educational curriculum should be designed to teach children about how to use RTI and its importance, and thus, growing a culture of transparency. State universities and educational institutions can play a very important role for
disseminating information to improve Government efficiency and information management.

6. Keeping in view the responsibility of the Government to implement the Right to Information Act, first of all the mindset of public servants should be changed along with awareness among the people. It is about time for government to recognize the significance of voluntary disclosure of information, seriously which will save a lot of time, money and energy as generally lost in processing those RTI applications.

7. It has been noticed that even though the RTI Act is a dream come true for people, yet it is not being implemented properly. For proper implementation of the Act, adequate training sessions should be provided to appointed officers to educate them on the provisions of the RTI Act, 2005 and the latest decisions on appeals. The Government may consider allocating a specific fund for this purpose in the financial budget. Detailed guidelines should be issued by the appropriate Government for proper implementation of the RTI Act, 2005. These guidelines should contain provisions for appointment of PIO and APIO, procedures to be followed in disseminating information and various other rules governing the finer aspects of the RTI Act, 2005.

8. Government should provide proper infrastructure to the Public Authorities. As more and more people are being encouraged to make use of the RTI Act, it is found that the necessary apparatus for providing sought information is still not in place. In some areas, PIOs are yet to be appointed and in others, applicants are complaining lack of co-operation from the PIOs. Officials senior to the PIOs are misplacing the appeal documents of applicants. Besides, there are problems of too few support staff, no means to operate the modest funds, and in some case, no letterhead.

9. Public Authority is required to make proactive disclosure of all the relevant information as per the provisions of Section 4 of the RTI Act,
unless the same is exempt under the provisions of Section 8(1). But the Act does not provide any penalty for violation of Section 4, which would ensure effective compliance on the issue and would also deter the applicants from approaching Public Information Officer, as the information would be made available to them. It is also recommended, as a preventive measure, that besides penalty for violation of Section 4, non-display of information under Section 4 should be treated as deficiency in service under the Consumer Protection Act, 1986 and the Consumer Forums constituted under the Consumer Protection Act, 1986, should be empowered to take cognizance of such failure in case of loss suffered by the applicant due to non-display of information under Section 4 of the RTI Act.

10. The following additional suggestions are forwarded to make functioning of RTI Act more effective:
   • Expand the definition of Public Authorities to include private corporations and non-government organizations where their activities affect people's rights;
   • It should be mandatory to provide the information under Section 26(3) on the official website of the appropriate governments. Further, Section 26 (4) should be amended to compulsorily provide for updating the information on the official website every month.
   • The details of all the Public Authorities, the Public Information Officers and Appellate Authorities of a department should be prominently shown on the departmental websites of the concerned department and it should necessarily be updated within 15 days from the date of any change.
   • An exhaustive campaign through the electronic and the print media should be initiated to make people aware about their right to information.
   • The law, if it provides for a levy of a fee for getting information must ensure that the fee is reasonable and does not act as a deterrent for asking information and does not end up debarring information from the
disadvantaged groups who cannot afford the fees. The law must provide for waiver of fees in certain circumstances.

• The law should contain provisions for setting up specific systems for storing and disseminating information and upgrading the existing systems for enabling easy access. There must be specific provisions for priority-wise computerization of government offices.

• The law should contain a specific allocation of funds for the purpose of operationalizing the Right to Information Act, 2005. Without this, the law will be a dead letter and shall have no effect.

• The law should contain a specific directive for simplification of official language. Information given should be in a form that can be easily understood by the people. There must be a focus on traditional means of giving information. As of now, most information is contained in official gazettes and publications that are usually unavailable and are of no use to the lay citizens, having the low literacy levels. The law should ensure proper use of the electronic and print media as well as use of conventional methods of communication as per the target group.

• The law should cast a positive duty on public bodies to inform the public in case of certain projects and activities that relate to the public. This envisages giving information without being asked for it. It must be made mandatory to give out certain kinds of information on a mandatory basis. This kind of information would include rules, information on proposed projects and schemes, and other relevant information which needs to be given out and updated routinely.

• The person who applied for seeking information but could not obtain the required information within time prescribed by the statute they should adequately be compensated by the defaulting government officials who are responsible for such delay or not supplying the information to the person seeking it.
• In order to avoid harassment to citizens at the application making stage, there should be a window at each of the geographically distinct offices of any Public Authority for accepting RTI applications, accepting the application fee and for accepting RTI appeals for the Public Authority as a whole. There should be a single window facility, and this should be located outside the security pass system, preferably at the reception counter.

• Steps should be taken to enable people to file their applications by post. To make this easy, awareness should be generated through printed and electronic media regarding the name of the bank account into which the demand draft or bankers’ cheque should be accepted. The particulars of these bank accounts should be furnished to the Central Information Commission.

• Citizens’ Charters should be made effective by stipulating the service levels and the remedy, if these service levels are not met.

• In order to improve the disposal rate of complaints/appeals by Information Commission through the following suggestions are recommended:

  (i) Hearings should be done through video conferencing. Since the Central Information Commission is situated in the national capital, it is inconvenient for applicants to be present during the scheduled hearing. Where the appellant has to travel to New Delhi, it is proposed that, the Information Commission should use video conferencing (VC) as a mode of communication for such hearings.

  (ii) There should be a usage of software application for managing the processes at the Information Commission. This application should assist in improving productivity/efficiency in disposal of cases, drafting of orders, day-to-day office administration etc.

  (iii) The Information Commissions have the power of a civil court while inquiring into the matter, whereas no such powers are available to the
Information Commissions while hearing of appeals under Section 19 of the Act. Therefore, Section 18 (3) should be deleted and a new Section may be inserted with the provision for providing of powers of civil court to the Information Commissions, while disposing of all kinds of matters.

The Information Commissions have been vested with the powers to impose penalties on the Public Information Officers, if they have acted in contravention to the various provisions of the Act. However, the Appellate Authorities have not been provided with similar power while dealing with the first appeals. Therefore, the Appellate Authorities should also be empowered to impose penalties while deciding the first appeals as per the provisions of the Act. Further, there is no provision to impose penalties on the Appellate Authorities even if they act in contravention of the provisions of the Act. Therefore, Section 20 may be amended by inserting a provision for the imposition of penalties on the Appellate Authorities on the analogy of the Public Information Officer.

On the basis of the study made we find that Public Authority is required to make proactive disclosure of all the relevant information as per the provisions of Section 4 of the RTI Act, unless the same is exempt under the provisions of Section 8(1). But the Act does not provide any penalty for violation of Section 4, which would ensure effective compliance on the issue and would also deter the applicants from approaching Public Information Officer, as the information would be made available to them.

List of exemptions under sec.8 should be consize and interpretation of Comparative Public interest should be extended. A seventeen point document has been discussed in section 4(1) (b) but which has not been followed strictly that's why strict provision is needed for mandatory disclosure. A certificate should be issued to every department for proactive disclosure because it may be encourageble to disclosure. It has also been found from the study that most of the Public officials of Bihar have been never entertained their any email and website. It is also
surprising that they never take interest in updating their website. Hence, a strict provision is needed in this regard. There is a need to change mindset of officials through different activities to ensure Proactive transparency. An awareness programme must be organized at certain intervals which may help the official to make them proactive person. Literacy level must be enhanced and must make the authority techno friendly.

It has also been found that there is no time limit for third party information under section 11 which must be incorporated in order to make this Act more effective.

So far the private sector is concerned they are not accountable for disclosing the information in the interest of the public under RTI Act, 2005. Hence, it is suggested that proactive disclosure clause must be inserted in the Act through which they are regulated and controlled in order to protect the principle of greater public interest. It is also suggested that those private sector companies whose economic and business activities are directly or indirectly concerned with public & social life or safety must be covered under the umbrella of RTI Act, 2005 for the purpose of Proactive disclosure.

It has also been found from the study that list of exemptions under section 8 should not be complimentary to the official secret Act, 1923 (OSA) which will ultimately promote administrative discretion. Hence emphasis should be given on minimum administrative discretion, so that maximum disclosure may be ensured.

Undoubtedly, there is no substitute of this RTI Act which touches the day to day life of a common man. This study concludes that if some hurdles, as identified in the course of the study made, are removed, this will certainly make the Provision of proactive disclosure more effective which will ultimately ensure and prove as an effective tool of RTI act 2005 for Indians. There is no doubt that very shortly the day will come when information will be displayed proactively.
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