Chapter VI

Conclusion and Recommendations

The thesis tries to analyse the implementability and acceptability of the Right to Information Act 2005. An understanding of the same would not be complete without highlighting the crucial relationship between accountability and the right to information and the challenges that arise while implementing the Right to Information legislation, which chapter I attempts to do. This chapter lays the foundation on which further research on the topic at hand has been carried out. The reason for the secrecy maintained by the non-elected officials of the government i.e. the bureaucrats, is explored in this chapter. The factors that have led to the promulgation of the Right to Information Act 2005 have also been elaborated in this chapter. The difficulties in the promulgation of the Act and thereafter the implementation of the Act are two different realities which have been explored in the first chapter. Chapter II provides the backdrop of the theoretical framework and literature review that this research seeks to analyse. The complex systems that have been formed as a result of the mammoth bureaucracy in India, which seek to diminish the effect of the public sphere primarily through barring of dissemination of information or curtailing the amount and quality of knowledge and information available to the general public, are sought to be made transparent to the general public through the Right to Information Act in India. The extent, to which the answerability and accountability of these institutions have been affected by the implementation of the RTI Act on a national level, is one of the questions that is sought to be examined in the thesis. The various theories relating to the research problem have been enunciated in Chapter II, such that the hypothesis of the research can be tested against these. Chapter II also details, towards the end, the research methodology that has been followed while conducting the study. Both primary and secondary sources of data have been used in this research. Qualitative methods, such as interviews of public information officers, appellate authorities, participation in a few appeals procedures were used by the researcher, etc. A large volume of data that has been used for this research is mainly secondary in nature. The secondary research primarily involves extensive review of literature available on the
subject. It consists of going through relevant books, records, journals, case laws available in various libraries and extensive study of the same.

Chapter III details the Indian experience with regard to the right to information act vis-à-vis other countries. The third chapter of the thesis makes a comparative analysis of the implementation of the Right to Information Act of India with that of U.S., Ireland, Australia, a few Scandinavia countries, etc. The ethos and democratic make up of each country with whom the comparisons are drawn is a very different, therefore the experience with regard to the freedom of information laws also varies. In the course of the comparative analysis it is seen that as a democracy matures, there is demand and pressure for more and more transparency and accountability in government functioning. The content of the chapter towards the end throws light on the major issues of participatory democracy vis-à-vis information dissemination. The continuous effort to throttle the free flow of information in democracies wherein the freedom of information act has existed for a much longer time than in India, serves as an example for our country because in many ways, history is being repeated as far as curbing the total implementation and effect of the Right to Information Act is concerned.

Chapter IV outlines the legal framework within which the Right to Information Act has been promulgated and subsequently being implemented. Firstly, the chapter outlines the aim of the chapter which is to analyse the right to information act in the backdrop of the various legal provision and national and international case laws. Secondly, the chapter locates the right to information act within the Constitution of India. It also explains in detail the importance of the right to information act and briefly mentions provisions of other statutes that are in consonance with the spirit of the right to information act. The chapter also outlines the various important judgments of the Supreme Court and the High Court pertaining to the right to information act; it outlines the process of promulgation of the right to information act in India. Right to information has also been studied with respect to human rights in India and the normative structure of the Act has also been detailed in the chapter for a better understanding of the workings of the Act. The chapter outlines through its various components, how the right to information Act is not a clear and precise piece of legislation in as much as it leaves a lot of scope for interpretation. Chapter V of the
thesis pertains to the case study that has been carried out pertaining to the implementation of the right to information act in the Delhi Secretariat. Two departments of the Delhi Secretariat have been chosen for the study, one being the department of education and the other is the department of health and family welfare. These departments were chosen for the case study because the sample size would then be large enough to take care of the myriad questions that this case study poses and to deduce some concrete results out of the same. Also, the effect that the RTI act has had on the lives of the common man can be best judged from the RTI applications that have been filed in the capital city, Delhi and the Delhi Secretariat would be the best place to study the efficacy of the RTI act. While choosing these departments as the sample data for the case study an analysis of the kind of applications received by these departments was considered and it was found to be a fit case for the study at hand due to the sample size, the form of data that was available and could be collated, the trends that could be analysed and the correlations that could be drawn from such data. The data collected from the Delhi Secretariat reveals effective implementation of the right to information act. Most of the RTI applications and the appeals originating there from, if any, have been effectively dealt with by the Delhi Secretariat. The success rate of the RTI applications filed in the two departments under study, is quite high. One reason that can be attributed to this trend is the high degree of legal awareness and literacy in the capital of the country. The detailed findings of the case study are given in Chapter V of the thesis.

The ultimate test for any piece of legislation is whether it accomplishes the goals that it set out to achieve, in effect meaning if the spirit of the Act has been upheld in its execution. Even though the principle of an open government has been imbibed in the RTI Act, still there is a huge gap between the existence of a principle and the ability of a piece of legislation to achieve that principle. Since it has been about 6 years since the passing of the RTI Act in India, there has been an opportunity for the researcher to benefit from a close scrutiny of the Act and its resultant implementation over a period of around six years in India. This has thrown considerable light on the attitudes of the government and the bureaucracy, as far as the right to know of citizens is concerned. There are various critiques of the RTI Act that emerge through the course of this study, the main one being that there is huge amount of official discretion, there are vague and broad terms that are used in the exemptions, the appeals process is faulty
and the unusually heavy burden of interpretation that is placed on the Public Information Officers. In the implementation of the Act, there seems to be a deep fear and mistrust of public awareness that the bureaucracy has. The challenge to bring about this change in the attitudes of the bureaucrats is a major challenge that requires collective effort. There is also a need to bring about changes in the attitude of public servants. Sensitivity to the public by the public servants has to be made an essential characteristic feature of public service. Even though legislation helps in facilitating public cause, it is not a guarantee for solution of the problem at hand. A perfectly drafted legislation cannot ensure perfect implementation and administration of it by perfect bureaucrats. However, genuine sensitivity to the cause led by genuinely concerned public officials shall definitely lead the way to success of legislations such as the right to information act. (Rowat 1980)

For e.g., in the Indian context, the erstwhile Environment Minister, Jairam Ramesh has transformed the environment ministry website into a founding brick for open Indian democracy: every letter and decision by the ministry is put up on the website for public scrutiny.

**Future path:**
To strengthen the legal right that the right to information legislation has given to citizens, it is important to ensure that the spirit of the Act is upheld in its execution. This has to be ensured every step of the way by educating every participant involved in the process of seeking information through the RTI act.

After the promulgation of the Act, all public authorities have to provide information under the right to information act. For the applicant it may be a challenge to find out which public authority to approach for obtaining information and then to find out about the concerned public information officer, so that the RTI application reaches in the right forum. Sometimes, if an application reaches the Public Information Officer and he does not have the relevant information, he may have to forward the application to another public authority to answer the same. This may create a confusing scenario for the RTI applicant and he may have to run from pillar to post to obtain information leading to the same situation that faced the applicant prior to the promulgation of the act. It would be more conducive to frame a national information policy such as that
exists in the US which will provide a sketch for all government records to be made available under one roof. Moreover, government publications can take various forms such as administrative reports, research reports, statistics, general information pamphlets, directories, press releases, rules and regulations, maps, bills and resolutions, committee and commission reports, hearings, journals and proceedings, law and statutes, etc. As is seen in India, seekers of information spend a lot of time, trying to find out which government department to go to, to get the information that they seek. As a result, a lot of energy is wasted in seeking a single piece of information. A centralized system may be a useful tool in enhancing access to information by the citizens. However, there have been a lot of criticisms against centralization of information. The centralization of information services creates an undesirable monopoly situation. It leads to a situation, ‘where knowledge and information are the monopoly of the few, the conditions of modern society ensure that political power would also be concentrated in the hands of the few. The result of this is that the public would only receive pre-selected, pre-evaluated and pre-packaged information’ (Canada Standing Committee on Finance, 1974:12). It may also result in a situation where the centralized information agency might become overloaded with information from all government and private sources and most of its time may get wasted and spent in organizing and filing information rather than responding promptly to requests of information from the public. On the other hand, being smaller units, individual departments would have less information to organize and therefore, would be more efficient in handling public requests. The international experiences regarding centralization versus decentralization may be desirable to examine various developments that have taken place in various western democracies. Information services in the UK are highly coordinated and this coordination exists at the central, regional and local levels of government. Therefore, it can be safely said that the information system that exists in the UK is both centralized and decentralized. Similar is the case with the government of France i.e. elements of both centralization and decentralization wherein various departments and agencies have been given control over the volume and types of information that can be divulged and the departments are free to write and publish their own periodicals, pamphlets, books and other forms of literature. On the other hand, the French government’s information services are also partially centralized and this is evident from the functions of the Direction de la Documentation Francaise, which was established to meet the governments need to
coordinate the information activities of the various departments. In the US however, there exists complete decentralization with the result that very little coordination of information takes place with so many independent information offices with each information office handling information in an independent manner.

It has been opined by Rowat (1980) that drawbacks exist in both systems and a common system which is a balanced mix of both centralized and decentralized systems of record keeping, seems to be the appropriate requirement for an informed citizenry. A centralized information system as opposed to a decentralized one that exists in India at the moment, is the need of the hour since it is accepted throughout that in modern western democracies, those who are in possession of information about the government are also in possession of government power. The government receives a lot of information that it must organize and store and eventually make it available to the public. There may be a need therefore for the establishment of a central information service. A central information system would also avoid and eliminate duplication and fragmentation of government information services. A pertinent example to give here would be that of Information Canada, which was an agency that was created in Canada on April 1, 1970 and had the task, to initiate information programmes on broad subjects such as federalism, which affect the nation as a whole and go beyond the responsibilities of departmental information divisions: to promote co-operation among departmental and agency information offices in major information programs and, consequently, increase effectiveness and efficiency; to advise and service, on request, departments and agencies; and to help Canadians get across their viewpoints to Parliament and government (Report of the Standing Senate committee, Canada: 1974). As soon as it was conceptualized there was huge criticism against Information Canada from various quarters, it was criticized by political parties as a government funded propaganda machine. The press criticized its creation since it feared that a centralized information service would quickly lead to information or news management. Moreover, many people saw it as an end to their power, personnel and financial resources (Rowat 1980). Thus, Information Canada proved to be a very controversial kind of initiative and had a very short life span and was abolished soon, even though it is an established fact that it was instrumental in providing information to a lot of Canadian citizens who otherwise did not have access to information.
The manner in which Public information officers take decisions regarding matters that reach them under the Right to Information needs to be examined and made fine tuned to fit with the theories of decision making that is involved in theoretical aspects of administrative processes. Decision making, which is an administrative process of critical importance for increasing organizational effectiveness, usually involves three related topics: the decision making process, the decision maker and the decision itself. Within each of these areas, decision making aims to influence value judgements held by other individuals. But if one defines decision making as that process whereby information is converted into action, then decision making is largely concerned with the process of acquiring, analyzing and reporting information to accomplish specific objectives. (McLure, Charles R.1980). A group of highly trained, professional information officers is needed who are well versed with all aspects of the information field. In fact, they should be capable of providing help to various information officers within the departments through their expertise. The ad hoc approach of the government in the implementation of the Act needs to be avoided. The implementation of the RTI Act not only depends on the will of the politicians and the policy makers but also is based on the solid foundation of well trained, knowledgeable and emphatic individuals who function as Public Information Officers. Without such people, the implementation of the RTI Act will be very difficult. Also, the PIOs need to be given administrative power and they should be encouraged to use their responsible positions. Public Information officers must be trained to act in good faith.

Another way forward is to provide a toll free number throughout the country which would provide information to the citizens and ensure up-to-date information.

As far as the appointment of the Information Commissioners is concerned, it is important that the choice of Commissioners is relevant and just, because they are the real implementers of the Act. Sometimes in the battle for receiving information, it is not the matter of government secretiveness that is daunting to a citizen but the attitude of secrecy of the public servants is what inhibits the public. In such a scenario, the Ombudsman throws light to the issue at hand and handles the situation at both ends. Sometimes the public servant has the attitude of taking something for granted. The attributes of the public servants is at times secretive and incomprehensible to citizens which creates a situation of acrimony between the citizen and the public servant. In
such circumstances, a deft Ombudsman can reduce tension by de-codifying the complexities of the situation. The Ombudsmen/Information Commissioners have to be trained to do so. A dedicated training cell for the information officers and Ombudsmen

**Personal privacy: A consideration in India**

Holm has aptly summarized the issue of protection of personal privacy in modern information societies by opining that even before the age of computerization, collection and registration of information was a representation of the privacy of an individual. Information may leak out from a manual file, it may be used for other purposes than those for which it was collected, and the contents of the data may be of such a character that the very registration must be regarded as a threat to privacy. As a consequence of modern technology, however, above all in the computer field, it is now to a much higher degree than earlier feasible in a very short time to store, process and disseminate information on private citizens, companies, etc. Although collection and dissemination of such information in the large majority of cases serves a legitimate interest, it must be borne in mind the ever expanding storing of information on individuals and companies in modern society, combined with the rapid spread of computer technology, has generated a general distrust of the various forms of data collecting and has made the public more aware of the problems in regard to protection of privacy.” (Holm, 1979). An information policy that is sought to be established should ideally follow the following five principles of information practice systems:

1. There must be no personal data record-keeping systems whose very existence is secret.
2. There must be a way for an individual to find out what information about him is in a record and how it is used.
3. There must be a way for an individual to prevent information about him that was obtained for one purpose from being used or made available for other purposes without his consent.
4. There must be a way for an individual to correct or amend a record of identifiable information about him.
5. Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take precautions to prevent misuse of the data.
6. That unnecessary cost to requesters of personal information should be avoided as far as possible.

7. Additional or new institutional arrangements should be devised for the prompt and informal redress of personal information grievances. (U.S. department of health, report 1973)

In the U.S. media, press reporters are usually reluctant to use the freedom of information Act and do not make regular use of it. Usually, federal agencies take an average of 33 days to respond to initial queries for information (Rowat 1979). Maybe in the case of India also, the reporters can get access to documents on a priority basis if possible. Though reporters like Mr. Shyam Lal Yadav in India are making tremendous use of the Act (his journalistic efforts have also been awarded). One reason for the lack of utilization of the right to information act is the time factor. The media is mostly in urgent need of information and the bureaucrats are at times guilty of using dilatory tactics to delay the supply of information. The media usually has very short deadlines, and a delay in receiving responses to applications deters the media from using the right to information act properly. In some cases, a delay in supply of information amounts to denial of information. Considering the same, there are proposals to give the fourth estate special status. Agencies, according to Watkins (1976), could be obliged to provide all documentation sought by the media free of charge. More important, initial requests by journalists for information maybe processed within 24 hours. If an application for documentation was to be rejected, the reporter should receive a decision on the matter from the agency involved five days after an administrative appeal was launched. (Watkins 1976)

After eight years of its initial passage major amendments were made to the Freedom of Information Act of the USA so that the statute was more workable and useful for the public. Time limits were prescribed for the dissemination of information. The applications under the Act were to be disposed off positively or negatively within ten days and the appeals were to be responded to within 20 days. Only under very exceptional circumstances, these deadlines could be extended. (Rowat 1989)

The initiation of any legislation is also a transitory phase and as in other countries, after the initial period of struggle, both the bureaucracy and the public will soon come to
terms with the legislation and probably lead to a more egalitarian society as far as the freedom of information is concerned.

**Delicate/personal matters and the RTI act:**
The way in which the Act is interpreted also puts the solicitor-client privileges, in the cases where the government is the client in jeopardy and also the medical records of public servants and other records that the government holds.

**Right to Information and Right to privacy:**
In the name of public interest, modern governments have eroded the right to privacy of individuals, whether it be in collecting information in the census records or medical records etc. There is a need to draw a line between the right to access documents and protecting individual’s privacy which will apart from helping individuals, help academicians in gathering information and doing their work.

Moreover, another important point is that the entire network of publicly paid, government contractual employees are not covered under the Act. However, in the defense of democracy it can be said that there has to be a balance between fearing the anarchy of too much democracy that is caused by releasing confidential information of individuals and state secrets and the right of access to public documents of the citizens.It is to be clearly understood that mandatory withholding of information is definitely against the nature and spirit of the RTI act and therefore all information must be made public after a certain period of time.

Regarding the issue of fees, it seems to be almost inconsistent with the spirit of the Act that a citizen should be charged a fee for asking information. The Rs.10 fee has been waived off in the case of below poverty line families but maybe that is not enough. Maybe the government departments should be forced to respond to the request for information by the citizen as quickly as possible and not to wait for the last moment of the thirty days time period, therefore in essence maybe there is a need to add the words, - immediately or as soon as possible.

Also, there is a need felt that government documents should be prepared in such a manner that it is easy to disseminate information to the public, for example instead of
preparing reports in one comprehensive form, it would be efficient to separate the recommendations from background studies and discussions between officials. Moreover, it is widely understood and known that the sensitivity of documents reduces over time and more rapidly for some documents than for others. Therefore the maximum withholding time for most records should be as short as possible. For e.g. if records are kept secret forever then historians, anthropologists, social scientists etc. will not be in a position to do their research. To assist in scholarly pursuit, the Act should require government departments to prepare special indexes of documents that are useful for research and to keep such documents in a library setting for easy reference by scholars.

Moreover, in today’s age of the computers where it is very easy for the records to be destroyed electronically, the Act should have some sort of mechanism whereby the destruction of records is policed because such records may have some value for researchers. Moreover, to measure the effectiveness of the RTI project, government departments should be required to maintain significant statistical indicators, such as the numbers and types of requests, numbers of refusals to the same, the cost of compliance, the number of appeals and various other indicators.

As far as the position of the Information Commissioner is considered, this office should be independent of the government and the staff that is employed should also not be public employees. The success of the Act, depends on a large extent on the attitudes with which it shall be implemented. In all fairness, the RTI Act provides a distinct set of guidelines for the general public to demand information from the government. It has a set procedure for acquiring information, sets a time limit for the government to provide information, the procedure for appeals is set, Information Commissioners are duly appointed and exemptions are duly listed. However, the main criticism of the Act is that the exemptions are vague and ambiguous, leaving room for a lot of discretion. The process of finding a delicate balance between secrecy and openness is no doubt a tough one and a workable compromise between the two is a place that comes only with time. In this context the American experience with the Act will be worth quoting which is as follows:

“Look, it took the Americans twenty years to get a bill through, twenty years from 1946 to 1966; then after it went into effect in 1967, two or three more years to begin
to find flaws and defects….they set up a couple of committees to monitor it and they were just getting in full swing when, of course, Watergate came along and helped them. But it still took a situation from 1946 to well into the 1970’s.” (Rowat 1979:56)

**Freedom of Information and the Law of Privacy:**
The principles of the FOI laws sometimes clash with the fundamental basis of privacy laws. For e.g. it is said that, “There are points at which the purposes of the Privacy Act…run counter to those of the FOIA…In general, where the policy of the Privacy Act is to secure a person’s “right to know” what information the Government keeps on him, experience with the FOIA is instructive. Where the Privacy Act seeks to preserve an individual’s right to privacy by permitting disclosure only to the data subject and to authorized government personnel for permissible purposes, it must be viewed in contradiction to the FOIA.” (Hanus, 1976:142) Moreover, the adjustment between the information that can be divulged under RTI Act and that which is exempt from disclosure, takes place at two levels. At the first level, the RTI Act itself has in-built statutes that govern the dissemination of information and stipulate that certain records should be outside the purview of the RTI Act. The second level comes into operation when a request is received for access to records and the request when read with some other statute runs counter to the other statute and therefore the information cannot be provided. Also, the opposite is also true that if a request impinges upon the personal space of an individual, however its disclosure is necessary for public good, then the information should be revealed. However, this basic understanding is as of now lacking in the implementation of the RTI laws, for example in the case of the interpretation in matters of personal privacy under sexual harassment laws and the RTI laws. A better integration of the two areas is needed which will then result in better coordination of different laws and more efficiency in their implementation. Major delay occurs in inter-department transfer of requests which can be easily diminished and eliminated under an integrated system.

In the course of this research, it has come to light that despite the existence of a single office of the PIO, in most departments, there are still a large number of jurisdictional issues and ambiguities that exist in the minds of the applicants under the Act. (Sharma, Rowat:1979)
As far as the exceptions are concerned, they are usually criticized on the following main accounts: That there are too many of them, that they are very vague, it could lead to broad cover. It is also important to note here that when exemptions are decided by the government the information that is decided to be made available under the RTI Act shall be available to all sets of people, i.e. from academicians to criminals; the span of the people using the Act is very wide. It is important to note that the RTI Act in India has provided the right to access only to a citizen and not to any person as in the case of USA and Australia, having done so it is important to keep in mind that the credibility of the legislation may get affected through this because it is almost impossible to police the credible from the non credible requests for information. Moreover, there is no safeguard in the legislation that discourages this kind of activity. Any foreigner could use the service of a citizen of India, to access information from a government department. It seems in the fitness of things to open the legislation to any person and foreigners may be charged a higher fees for accessing the information.

The doctrine of severability is very important and has to be judiciously used in the implementation of the Right to Information Act. It is known as the rule of segregability in the US. It implies that if a part of a document is exempt and can be reasonably severed from any part that is not, it shall be severed and the rest of the part can be released. This rule is applied the most in the matters where personal information is requested under the RTI Act.

Another important recommendation that can be made to facilitate the better implementation of the Act is the establishment of provisions in the Act which make the transfer of records to government offices close by to an applicant a possibility and the delivery of illegible or undecipherable material to the applicant should not be allowed.

Of late there have been a lot of revelations about the activities and wasteful spending of Parliamentarians through the RTI Act some by the media, some by workers in the organization itself. This trend has been lauded by some people to be a good step in the direction of proving the worth of the RTI Act which has resulted in extracting information from a reluctant system. (Chapman and Hunt: 2010). In some sense this is
true but it could also be a case of missing the wood for the trees. Even though the revelations on the public spendings of some of the officials has been an eye opener, and entertaining and embarrassing at times, however, it provides a narrow perspective on the topic of an open government. However, according to Henshaw (1979), if the true value of freedom of information is to be assessed then, at least three factors have to be considered i.e. the relationship between the central government and local authorities, the second being the development of local government and the third are the various attempts to involve the public in local decision making. According to Sir Henshaw these three factors are inter-linked and are of increasing importance as we move into the twenty-first century. As Henshaw further states that it is a fundamentally flawed notion to assume that the Freedom of Information laws can be the sole drivers of increased public participation. They only provide an infrastructure for openness and other drivers are also crucial for the purpose of making democracies more participatory. He has outlined some of these other factors as the wide-spread lack of knowledge that is exhibited by the public at large in relation to the functions and activities of the local government, a lack of trust in politicians and the revelations about ministers involved in corruption cases and scams has not helped their image in the eyes of the public and the complex patterns that the local government has to face. Beneath the surface of the RTI Act being a revelation of sorts for many ill on goings in the government it is important to note that a wide range of complex issues are hidden in the backdrop, on which the evidence is very limited. While bringing to light certain information that was hidden behind the closed walls of bureaucracy and bringing it into the public arena, it has also had the negative effect of driving the decision-making process further back in ways that the discussions are not revealed to the public. According to Henshaw, the way forward for information laws will be completely new ways of working with citizens and as service users which should be local in its approach, taking into account different expectations of other sectors such as the private sector whose contribution is necessary for the effective functioning of the RTI Act but who may not share the same values that are traditionally associated with accountable local government. Moreover, businesses fear that if the information that they supply to the government will be misused and that there is no degree of confidentiality built into the system then they will be forced to stop supplying the government with information. This may be an empty threat.
The above findings and recommendations of the thesis are expected to provide a better understanding and implementation of the Right to Information Act.

********************************************