Chapter II

Theoretical Framework and Research Methodology

To understand the concept of ‘Right’ and ‘Access’, it is important to analyse the concept and rationale, through relevant theory and empirical work that is available. The survey of literature is organized around three key themes:

- Accountability
- Rights and Rule of Law
- Right to Information

A review of literature on accountability suggests conflicting ideas as to what constitutes the concept of accountability. Public accountability has been defined by economic development agencies such as United Nations Development Programme (UNDP) in terms of rationalized and transparent systems of bureaucratic control. On the other hand, the legal perspective focuses on checks and balances. One of the important links to this process has also been turning to bureaucracy to examine accountability problems of electoral democracy.

Conventional practices of accountability have relied heavily on the idea of judicial checks and judicial review. In this context Dicey’s (1959:240) idea of Rule of Law becomes pertinent. Dicey argued for a strong judicial check on the growing administrative State. What consequently came to be established was a symbiotic relationship between judicial review, procedural visibility and public faith in government. Also the Constitution is the embodiment of the Rule of law and as described by Dicey, in a country where the right to freedom is part of the Constitution because it is inherent in the law of the land, the right cannot be negated or subverted. It becomes embedded and inherent to such an extent that it can only be destroyed through a revolutionary change of the various institutions and manners of the State. This idea assumes importance for the proposed research. Robert O.Keohane (2003) indicates that the progress towards linear process of the market and management efficiency has increased administrative orthodoxy, which is further leading to isomorphic and global trends which shrink aspects of accountability. This is exacerbated by the fact that history is seldom linear and may require less orthodox arrangements for citizens which the new situation may not be in a position to provide.
Keohane and Held (2003) have also raised the issue of organizational entropy due to asymmetric accountability which shrink people’s participation and weaken political power.

Accountability in the form of judicial review would constitute horizontal accountability as delineated by Guillermo O’Donnell (1998), who makes a distinction between two key dimensions of accountability: horizontal and vertical. The horizontal dimension is largely concerned with the effective operation of the system of checks and balances and with due process in governmental decision making. As such, it pertains to checks placed by institutions on each other, and does not involve citizens. The vertical dimension focuses instead on relationships between citizen and state and therefore includes elections and other mechanisms that citizens use to control their government. There is widespread consensus in most scholarly literature on Latin American democracies that governmental accountability in both dimensions is sadly lacking.

The difficulty of securing vertical accountability has been remarked by many – from democratic theorists like Larry Diamond to scholars of law such as A.G. Noorani. Diamond has argued that the governing elite must be made accountable to one another and to the people, not only in theory but in fact. Moreover, institutions must be constructed or reformed to ensure that this will happen. A.G. Noorani (2002) in his work highlights the problems in the enforcement of the Rights and Civil liberties of citizens and also examines how the process impacts the role of judiciary and State accountability.

Jerry L. Mashaw (1996) argues for the need to understand the concept of accountability through the lens of accountability regimes. He delineates three types of regimes: those associated with public governance, market place, non-governmental and social realm. What assumes importance for this study is his idea of public governance where the author also examines the processes of accountability of non-elected officials within the legal administrative and political framework. Mashaw explores relationship between the solution for various challenges faced by the public functionaries while carrying on their duty or the fit between the various normative commitments that various accountability regimes support and the normative
commitments of a particular programme. For e.g. to protect democratic values and the rule of law the fit would be to strengthen public governance accountability regimes. However, such solutions or fits may not be the best answer and might lead to a set of rules of thumb for institutional design. This study attempts to analyse whether the Right to Information Act has been successful in addressing the normative issues that surround an accountability system.

John Gardner (1996) emphasizes on the idea of public accountability and links the meaning of accountability to the electorate, or to the tax payers, or to the citizenry, either directly or through their representatives. The key argument of his work is that accountability is a relational mode of responsibility but at the same time it is also a specialized social goal. His work also critically examines the question about what accountability is for. Gardner states that the threat-based mode of accountability to which public officials are routinely subjected is counterproductive. The focus on accountability has created an era of suspicion because the system constantly accuses officials of being up to something. Therefore, institutionalized mechanisms may have made public services cheaper but also may erode their value. This study proposes to analyse whether the mechanism of ensuring accountability that has been provided through the RTI Act has resulted in the erosion of the surplus unpaid cooperation known as public service ethos. Also it may have also made people disinclined to explain themselves honestly and openly for fear that every little slip they make will be punished. Therefore, the threat based mode of accountability may be counterproductive even from the point of view of accountability.

Sasha Courville (2003) provides an interesting insight into the critique of the process of accountability and does reiterate that while it is a critical element in any government system it is also not just pure good. Catalina Smulovitz and Enrique Peruzzotti (2000) in their work argue ‘accountability can take place through paths different from the ones usually acknowledged by democratic theory’. This work provides a window to re-examine alternative paths to theory and praxis. The work of Smulovitz and Peruzzotti resonates with the Indian experience, where the Right to Information Act was substantially the result of a civil society initiative by the MKSS. Other civil society organizations such as Parivartan and National Campaign for
People’s Right to Information (NCPRI) have also played an important role in making possible the enactment of this path-breaking legislation.

What is relevant in the work of NCPRI is their attempt to highlight the existing lacunae in the RTI Act. These have been outlined as the need for extension of the RTI Act to Private Bodies in addition to Public authorities, as already provided for in the RTI Act 2005. The work and writings of Arvind Kejriwal and Parivartan also assume importance in the context of current debates on RTI. The UNDP report on ‘Civil Society and Right to Information: a Perspective on India’s Experience’ by Pradeep Sharma delineates how the role of the civil society has helped bring about a paradigmatic shift in the debates on RTI. The author particularly examines the concepts of public hearing, social audit and public networking.

Raymond T. Nimmer and Patricia Ann Krauthaus (1992) discuss the concept of information as a product and it also attempts to examine the key legal structure that is evolving to deal with this concept of information as a commodity. ‘Open government is not always easy government but it is good government’ (Thomas 2007). The validity of this claim is attempted to be examined by this thesis. Open government gives rise to a lot of debate and criticism which increases the work of the bureaucracy, that is why it is said that open government is not necessarily easy government.

**Theoretical framework:**
Censorship in a democracy prevents discussion and debate and discrepancies in the democratic system are therefore left uncorrected. The argument given by Tocqueville is that “censorship prevents us from correcting errors through critical discussion.” and “public sector is by nature internalized, closed and censors information under the pretext of confidentiality of government” (Tocqueville, 1835:10-12). Tocqueville believed that the society had gradually moved from aristocracy to more equality, which he described as an irresistible revolution. However, true democracy and along with it, political liberty is achieved in a democracy primarily when the citizens are totally free to make informed decisions through information about the State machinery. “The first duty which is at this time imposed upon those who direct our affairs is to educate the democracy; to reanimate its faith, if that be possible, to purify its morals; to regulate its energies; to substitute for its inexperience a knowledge of
business, and for its blind instincts an acquaintance with its true interests; to adapt its
government to time and place, and to modify it in compliance with circumstances and
characters- The consequence of this has been, that the democratic revolution has been
effected only in the material parts of society, without that concomitant change in laws,
ideas, habits and manners which was necessary to render such a revolution beneficial.
We have gotten a democracy, severed from whatever would lessen its vices and
render its natural advantages more prominent; and although we already perceive the evils it brings, we are yet ignorant of the benefits it might confer.” (Reeve, 1832: xxii-
xxiv)

For an evolving democracy the right to access public information is indispensable for
democratic sustenance and safety of public life. This section of the thesis would first
explain the nature of the transition from government to governance. Primary reliance
is placed on the writings of Kuldeep Mathur. Mathur (2009) has explained how the
nature of the State, which is the central theme in his discourse, affects the relationship
between government and its various institutions and citizens. The government
functions through administration and creates a relationship between institutions and
citizens which undergo a change with the changing nature and form of the State such
as autocratic state, military state or democratic state. With the advent of globalization,
there is a greater role of market forces and less of the state, the welfare state is giving
way to the market which involves new relationships between the state and the private
citizens, corporations, civil society, international aid providing agencies etc. This has
lead to the redefinition and re-conceptualisation of the term governance. The United
Nations Development Programme (UNDP) has defined governance as “the exercise
of economic, political and administrative authority to manage a country’s affairs at all
levels and the means by which states promote social cohesion and integration and
ensure the well-being of their population. It embraces all methods used to distribute
power and manage public resources, and the organizations that shape government and
the execution of policy. It encompasses the mechanisms, processes and institutions
through which citizens and groups articulate their interests, exercise their legal rights,
meet their obligations and resolve their differences.” (UNDP policy document,1997:
Glossary)
Over a period of time, the term governance has become inclusive of elements such as accountability and transparency. Amartya Sen argues that public action has the potential of making a government really accountable and transparent (Dreze and Sen, 1997). Public action is the action that is originated by the people themselves rather than by the government. The government was earlier pyramidal, internalized and concerned only about itself. However, now it is forced to look outwards and form alliances and partnerships with non-government organisations, resident welfare associations, companies etc. The government usually does not have the expertise to handle so many different relationships and the change from single hierarchical model to multiple players and partners can be monitored only by informed citizens. Thus, to ensure that a mature democracy such as that in India moves from government to governance, it is necessary for the citizens to monitor the interplay between various state actors for which an informed citizenry is most important. The transition from government to governance brings in more partners, collaborators and investors from national and international domains. Developmental activities, budget allocations and personnel decisions within bureaucracy become matters larger than the established framework of rules which could monitor them. Thus there is greater chance of misuse, arbitrariness and hurried decisions to benefit a party at the cost of public money. There is a big gap and a disjunction between established norms of public accountability and the role which the bureaucracy is expected to deliver to the satisfaction of partner agencies. The right to information bridges this gap in a most effective manner.

The concept of democratic government has changed a lot over the centuries with the rise of complex systems and state structures which has completely changed the older democratic notion of direct participation of the citizenry in policy making such as that which existed in Greek city states or American town meetings of the eighteenth century. The citizens of the modern states are not so directly connected with the policy makers and feel a kind of missing link between themselves and the political and bureaucratic policy makers. This sense of alienation has resulted in the alienation of the electorate. The way to overcome this sense of alienation among the public is by providing free information about government functioning to the public. As in the opinion of Pierre Elliot Trudeau (1977) complete and factual information is necessary for a healthy democracy to exist and develop. Openness in government functioning
will lead to evaluation of government policies by the common public in a better manner. Karl Brant (1965:629) has stressed upon the need for vigilance in a democracy by socially conscious citizens. “Eternal Vigilance is the price of liberty.” he said that ‘the most effective way to conserve and protect freedom and human dignity is by way of eternal vigilance’. According to Brant, eternal vigilance should be carried out in a democracy by those citizens who have an incorruptible conscience and the courage to put their lives at stake for basic rights bestowed by the constitution. Eternal vigilance, as propounded by Brant can be carried out through informed citizens. Information is increasingly important in a thriving democracy such as India because the right of the people to gain information from public authorities is used as a tool of vigilance.

The second part of this chapter discusses the relationship between bureaucracy and accountability. P.M. Blau (1956) has defined bureaucracy in terms of an organization that coordinates and puts together the work of a large number of individuals. The motive of such an organization is to accomplish large-scale administrative tasks. All literature on bureaucracy is replete with the need for accountability. While some bureaucracies may become humungous and large and thereafter sluggish, there are many bureaucracies that may be more inclined to become arrogant towards their masters i.e. the people. It is for this reason that they are required to be subject to questioning and under constant vigilance by the citizens. Even though many administrative reforms have been suggested time and again as a remedy for the failings of administrative bodies yet democracies run the constant risk of being autocratic and unanswerable to the demands of the common public. It is for these reasons that Jennie McMullin Turner (1952) advocates for democracy in administration. She states that it may be simpler to run a monarchy form of government rather than a democracy because the shift from a monarchy to a democracy becomes more complex. Education is required to bring more and more people into the electorate and when the government demands education, it must also give education. The idea in a democracy should be that of maintaining contacts between administrators and the people. Not only should there be control and regulation from the bureaucracy but also regular audits of the bureaucracy by the people, which is the crux of vigilance by the common public of the administration which governs them. It may sound like a very simple idea of dissemination of
information, however, democracy in administration is easier said than done. It is much easier for the bureaucracy to hastily issue an order in the dark suddenly and then cover up itself when the criticism from all quarters begins. However, it is much more difficult, however definitely much more needed, to have continuous vigilance from the public over the functioning of the bureaucracy. This may take place through direct discussions with the public, involving the public in every decision that the government needs to take and invitation to the public to engage in constant dialogue with the decision makers. For the public to be able to perform such kind of an interactive role it is important that such public is well educated and informed. The bureaucracy has to also accept the role of the common public as an intelligent and argumentative entity which enters into constant interaction with the decision makers. Such an interaction would result in a vigilant citizenry and a truly participatory democracy. Moreover, for such vigilance on the part of the people to take place there needs to be information about the functioning of the government that should be available to the public. It is said by Milton Friedman that eternal vigilance is required and there have to be people who step up to the plate, who believe in liberty, and who are willing to fight for it. The basic characteristics of bureaucratic organization are specialization, a hierarchy of authority, a system of rules and impersonality. P.M. Blau (1956) has stressed upon the need for finding democratic ways of controlling bureaucracies otherwise such uncontrolled bureaucracies will become overpowering and shall master over the common public. Mancur Olsen (1984) has opined that the bureaucratic model is a closed and self contained model. The right to information is necessary for a healthy democracy such that bureaucratic red tapism, corruption and sluggishness can be intercepted. For this purpose, it is important at this juncture to define information.

**What is information?**

It becomes very important for the purpose of this research to theorise the meaning of the term ‘information’ that is the basis for this research. While it is true that the term information may have different connotations in different contexts, it is pertinent to draw a functional and operational definition for the term. Websters’ New Collegiate Dictionary defines information as “knowledge obtained from investigation, study or instruction.” Many scholars have attempted to define the term ‘information’ and all of them have defined it in different ways and from different perspectives. For the
The three distinct terms i.e. ‘open government’, ‘transparency’ and ‘freedom of information’ are often used interchangeably. Each of these have been given a specific meaning by some authors (for e.g. Hazel 1999, Hood and Herald 2006), however, according to Hunt and Chapman (2010), precise distinctions may sometimes obscure overall meanings. The value of information in today’s knowledge economy is evident from the fact that many authors have analysed and evolved at the conclusion that
whereas information may be a cognitive process, in many instances it is undoubtedly a marketable product. The amount of information is also on the rise. More information is now being generated and printed or stored than has ever before been done in the history of mankind. Since there is a phenomenal rise in the amount of information that is available with government departments, the result can be a lot of confusion that is generated amongst the members of the public because of various government orders that are contradictory in nature and come one after the other such that the efficacy of one order gets diminished or wiped by the next order. In such cases the public has the right to demand details of such orders from the government. In many cases the public is fed with information of unreliable nature by middlemen and vested interests. To avoid this eyewash it is important that the public receives the clarifications from the government itself in the form of information received after the filing of a Right to Information application.

Harry M. Kibirige (1983) mentions in his book, the constant tension between the information user (i.e. the citizen in this case) and the provider (i.e. the government). These six dilemmas can be juxtaposed for the purpose of this research to mean the dilemmas that are faced as far as the transfer of information between the government and the citizen is concerned. The first dilemma pertains to the puzzle and complexities that the citizen has to face while getting the right information from the myriad of potential sources. Therefore, the citizen while making a request under the RTI Act has to first ascertain the right authority to which he can make the request or else it will lead to the application being forwarded to the concerned authority which in effect means a loss of time for the applicant. Information experts in the form of Public Information Officers (PIOs) are usually designated with the task of solving this puzzle. However, seldom they are themselves, inequipped and do not understand the nuances of the Act and many times this leads to duplication of work as the application is forwarded from one department to the other. A good system of dissemination is much needed to make the system of dissemination of information effective because the effectiveness of the user’s decision may depend on how efficient was the information source(PIO) in tracking, processing and presenting to him the appropriate information. This dilemma emphasizes the need for an efficient system of information delivery.
The second dilemma can be read with the third dilemma that is faced by the users that whether to charge the public for information that is being supplied under the Act because the information that is generated in public offices is also costing money to be generated. This puzzle is even more crucial when the level of public funding is progressively shrinking and the demand for on-line services is rising and accentuating due to more and more applicants using information technology to access information under the RTI Act. (Very recently, the MCD has started accepting RTIs online.)

The fourth dilemma that constitutes the problem of information dissemination is the information problems that require instant solutions wherein the citizens approach the information officers seeking instant answers. The life and liberty clause in the Right to Information Act 2005 tries to provide instant answers to the applicants, however, the efficacy of the same is yet to be determined.

The development of new technologies has given a new dimension to this research since the development of new technologies has necessitated the re-structuring of the administrative set-up. Many applications are received on-line. Suomoto disclosure of information on the websites of the government offices has become mandatory. In the state of Bihar, the PIOs have started receiving RTI applications over the telephone.

Finally, the last problem that is analysed by this research is the international dilemma of UN conventions that require the governments of all countries to be open and transparent with overlapping areas of privacy and national sovereignty that sometimes prevent the free flow of such information.

**How does information bring accountability?**

A thematic engagement into the past and present theories relating to accountability and its relation to freedom of information would help understand the various dimensions of right to information in the contemporary models and discourses. This is significantly important to understand the nature and substance of right to information as it fundamentally revolves around the concept of strengthening democracy by promoting accountability and one of the tools for doing the same is by providing access to knowledge to the citizens. Therefore, there is an apparent reason to make a
thread bare analysis of the current theories and literary and scholarly work on the subject of accountability and access to knowledge.

The Right to Information has to be studied within the framework of accountability in the changing nature of the state. It has attempted to redefine traditional accountability and contours of a rational legal state held by parliamentary accountability. The new reforms towards marketization and contractualism have brought new institutional actors in mobilizing and articulating interests of society. This change has replaced the rationality bound state held accountable through parliamentary channels by a supermarket state model providing services to citizens. Thus accountability has become more instrumental than a design for articulating collective interests and the right to information of the citizens is used as a means towards this end. Thomas (1995) rightly points out that ministerial responsibility has been replaced by contract based accountability. Further D.F.Thompson (1980) expresses the concern regarding the replacement of political power of elected officials by an indirect model of political leadership. Keohane and Held (1984) have also raised the issue of organizational entropy due to asymmetric accountability which shrink people’s participation and weaken political power. Davis (1997) highlights asymmetry of accountability when a few operating and regulatory agencies control and hold enormous power and are accountable to none.

Robert O.Keohane (2003) indicates that the progress towards linear process of the market and management efficiency has increased administrative orthodoxy, which is further leading to isomorphic and global trends which shrink aspects of accountability. This is exacerbated by the fact that history is seldom linear and may require less orthodox arrangements for citizens which the new situation may not be in a position to provide. T.M. Isaac and Richard Franke (2000) in Local Democracy strengthen the above argument by bringing in the experience from the way Kerala Panchayats devolved 40% of their budget to 900 Panchayat Village Planning Committees and resolved the issue of weakening accountability of political executives. There are many related issues which have to be surveyed in the process of accountability. Keohane mentions Performance Metrics in which every layer of decision making has to be assessed and evaluated. This would provide a better picture of many hybrid structures which are raised as solutions to decentralized decision
making. This would also suggest wherever the need for a cultural creolization, an added justification for the right to information arrives in this background where the State and its operating agencies are moving towards greater divergence approach, expanding to absorb global capital and technology on one hand and services on the other. This increased heterogeneity in the state decision making bodies are likely to conceal many facts which citizens have a right to know about.

Accountability has three main problems;
1. Institutional: because the organizational links between political responsibility and managerial accountability is loose and disjointed.
2. Political processes: Managers have no clear norms for neutrality and value free decision making.
3. Organizational Structure: Managers are not allowed to answer for the direct action or performance of a service provider to people or stakeholders.

Thus Peters and Pierre (1998) warn about the ambiguity in the processes of accountability which is more than what it was in traditional rational –legal model of State. Pollit and Bouckaert (2000) in Public Management Reform, Oxford University Press, sum up with three pillars of accountability which strongly recommend the need for information as a right to citizens. These are:
1. Authorization: An identifiable superior
2. Support: Those who support the political leadership have to claim rights and hold rulers accountable.
3. Impact: Those who are choice determining for some people should be accountable for their action.

The right to information is regarded by many scholars to be the master key to good governance since it helps to:
- Promote openness, transparency and accountability in public administration;
- Empower people to combat state corruption
- Prevent administrative high handedness or arbitration
- Bridge the gap between provider and recipient of public services
- Make citizens part of the decision-making process in the government
• Provide responsive administration
• Strengthen the foundations of grassroots democracy through people’s participation in local governance and development activities; and
• Empower people to have access to other rights (Roy, 2003: 312-314)

The implementation of the right to freedom of expression and the right to information are pre-requisites for ensuring the voice and participation necessary for an open democratic society. This implies that the promotion and protection of both access to information itself and flows of information that exist between constituents—both men and women, government, parliament, community groups, civil society organizations and private sector are of equal importance. The First report of the Administrative Reforms Committee recommended that the ‘oath of secrecy’ should be replaced with ‘oath of transparency’. This underlines the importance that is placed on the transparency and accountability in the functioning of the government.

The third aspect in this chapter is the concept of ‘right’ and ‘information’ within the pro-poor governance framework. As the name of the Act itself suggests, there exist two very important ingredients herein, one being the concept of ‘right’ and the other being that of ‘information’. In the first scenario, the focus is on the right of the people to be informed by those in power such that they become an informed citizenry. In the second concept, the onus is on the bureaucracy to provide information to the public such that the idea of a participatory democracy is complete and evolving. Since the Act deals with both of these vital concepts, it becomes very important to carefully examine the hypothesis of the research in the background of these two concepts. The research that is carried out by Jo Lind and Dominic Rohner (CESifo Working paper series: 2011) is pertinent in this context. Lind and Rohner have tried to answer difficult questions such as what are the consequences if some voters are better informed about politics, and thus better at picking the most suitable political party for themselves. And what happens if this political knowledge is systematically skewed i.e. if the better educated who tend to be wealthier are better at choosing their most favourable party. Their paper argues that knowledge is power. They conclude that income and information tend to be systematically correlated higher education results in higher level information and political access through higher incomes. As a result
the state policies become less poor-centric and redistributive. The poor who are most in need of state spending, actually end up receiving the least because of low access to knowledge. For example, the rich who are in decision making positions do not direct the public exchequer’s money towards public schools because they can afford to send their children to private schools. As a result, the poor are forced to send their children to ill-equipped schools and the consequence is low levels of knowledge.

The Right to seek information has been recognized as a human right and goes beyond the right to life and liberty. Article 19 of the Universal Declaration of Human Rights adopted in 1948 states that, “Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interferences and to seek, receive and impart information and ideas without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” In today’s time freedom of speech and expression is recognized in international and regional human rights law. The right is enshrined in Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and People’s Rights. Based on John Milton’s arguments, freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate information and ideas, but three further distinct aspects i.e. the right to seek information and ideas, the right to receive information and ideas and the right to impart information and ideas.

The Right to Information is a very important part of a bundle of civil rights. Dicey (1959:207-8,240) characterized, the right to personal liberty, as ‘in substance a person’s right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification.’ Similarly, the right to freedom of discussion is defined by Dicey as ‘Any man may…say or write whatever he likes, subject to the risk of, it may be, severe punishment if he publishes any statement (either by word of mouth, in writing, or in print) which he is not legally entitled to make.’. This research critically examines the present form of the Right to Information Act 2005, since there is a need to analyse whether the legislation has been able to fulfill its intended purpose of facilitating the process of accountability and transparency in the Indian democratic framework. The Right to Information Act
2005 is an attempt to codify this right to receive information from public functionaries which is in fact an important pillar of democracy where all citizens have the right to freedom of speech and expression which is slated to include the right to information. This helps in making the democratic framework of a country stronger, more dynamic and truly representative of the people. The study draws from the work of Bruce Ackerman and James S. Fishkin (2005) who argue that information in fact is a first step to strengthen democracy and that an informed citizenry will lead to dialogue, deliberation and creation of community.

O’Donnell has already pointed out in the case of Latin America (1993) that the failure of political society to effectively embed itself in civil society and to make itself accountable to citizens, and not just interests, can severely undermine the legitimacy of democratic rule. The right to information tries to address the problem of absence of accountability, lack of transparency in government functioning and to quote one example from the area which definitely requires increased transparency is the long overdue thorough analysis and amendment of the Commissions of Enquiry Act, 1952 so as to make it obligatory for the Union and State governments to provide for the publication of the Enquiry reports, once they have been presented before the legislatures in time. Such publication may include a reasonable exemption clause if deemed necessary in the interests of the state, national security or foreign relations. In this context, the eminent jurist, Justice V. Krishna Iyer (1985:14) has stated that, “When Commissions prolong their enquiries and produce reports which are shelved for long in government pigeon-holes, matters of public importance suffer, fade out and the people are stultified by denial of information...In most such legislations Governments enjoy the option to accept or reject the report which means that a cunning Administration may use Enquiry Commissions as crisis tactics, the end product being conveniently discarded if unfavourable. Thus, unless meaningful mutations are made from the angle of freedom of information, commission strategy may prove to informational treachery.”

Moreover, scholars have for long warned about the Strasler effect i.e when anything is under censor and control, it becomes more desirable. This can also be used in the present study, for the concept of information. In a mature democracy such as that of India, it is not possible to hide information under the garb of official documents from
the public. The English enclosure movement that sought to fence off common land and tried to turn it into private property can be translated into the Freedom of Information debate. As James Boyle (2003) has discussed in his article, ‘The Second Enclosure Movement and the Construction of the Public Domain’, the information that is held by public officials in government offices can be considered to be the commons, however this has been taken over as private property of the government officials in many senses, for various reasons. The tragedy of the commons is that it is no longer common and has been privatized to every end possible. The same seemed to be the situation with the public documents and information held by public officials prior to the promulgation of the Right to Information Act 2005. Public records were not treated as public property but as private property and these were held very closely by government officials. They were guarded as if they were private property and access to such documents was restricted and to some extent denied by the government. Just as James Boyle makes the case for more property rights slowing down innovation, by putting multiple roadblocks, multiple necessary licenses, in the way of subsequent innovation, similarly one can make the case for the bureaucracy placing multiple roadblocks and in many cases censoring the information access to the general public thereby, creating a veil of secrecy that restricts an effective democracy by lessening the effect of participatory democracy. Using a novel version of the idea of the tragedy of the commons, Heller and Eisenberg (1998) referred to these effects - the transaction costs caused by myriad property rights over the necessary components of some subsequent innovation - as The Tragedy of the Anticommons. This would imply that the information about government functioning that is available with the bureaucracy is covered up under so many different barriers to its free flow that it becomes virtually impossible for the common man to gain access to information. These barriers to open dissemination of information may be in the form of legislation (such as the archaic Official Secrets act 1923) or internal code of conduct framed by the bureaucracy itself or narrow and limited interpretation of the rules and legislation. James Boyle (2003) further explains that what is true of property is also true of public domain. Borrowing his argument for the matter at hand that relates to information that is available in public domain, it can be said that the information that is available in the public domain should also be protected for rational reasons that are enumerated in the exemption clause of the Act, such as national security, intellectual property concerns, personal information, etc. Just as in the case of intellectual property, a patent pool
kind of structure needs to be created wherein all public information is freely available to all the citizens of the country. It is an irony that in a country like India, which boasts of being a vibrant democracy, access to information, is being guarded by the keepers of public records. The bureaucrats are acting opposite to the principles of accountability, if they are not sharing information with the public and are not disclosing information that should be publicly known because it is information about the public. This is the concept of taking away from the commons what is of the commons and then turning it into private property on which the common public is viewed as a trespasser. This situation existed in India prior to the promulgation of the Right to Information Act and in some ways it can be said that the Right to information is an attempt to rectify the problem of almost zero accountability that exists in government functioning in India.

The importance of the Act in bringing about the much required changes in the Indian bureaucracy is evident from the fact that the first report of the Second Administrative Reforms Commission is dedicated to right to information. The current trend is to move away from the traditional form of invisible government which has become obsolete in this age of globalization and liberalization (Roy: 2007). The current trends towards the shift from a strict bureaucracy to a minimalist government control era can be traced to the advent of globalization and economic liberalization that took place in the late twentieth century, which according to Guha Roy brought about a paradigm shift in the nature and character of the state and public administration from “the traditional welfare administration state to a corporate welfare state.” (Roy, 2006: 396-411)

**Accountability and governance:**

Currently, the developing countries are facing a spate of reforms that are being called for in the area of public administration. Some of these concepts are fairly new such as good governance, new public management, citizen’s charter, reinventing government, ethical governance, contracting out public services, e-governance, etc. Some of these concepts are carried over from developed countries and are no doubt targeted towards reforms of various kinds such as social and economic reforms. In the case of India, the economic liberalization of the country that took place in 1991 brought in a new era of administrative reforms. There was a paradigm shift from the Nehruvian model
of socialist welfare to a westernised model of development through globalization, liberalization, free-market economy and good governance. As a result of this shift in the economic policy of the government, there was a need felt to haul up the bureaucracy to make it more contemporary with changing times, such that it is more conducive to the changes that were taking place in the economic front of the country and to make the bureaucracy more conducive to growth and to make it a function of growth and not as a roadblock to growth. To this end, a number of reforms were initiated such as the efficiency enhancement in public service delivery, simplification/consolidation of administrative rules and procedures, capacity building of public functionaries for good governance, downsizing of public bureaucracy, expenditure reforms in governments, civil service reforms and ensuring accountable, sustainable, responsive, transparent and citizen-friendly administration. “A nation without the means of reform is without means of survival.” was famously said by Sir Edmund Burke (1729-1797). In general, most of these reforms aim at common initiatives such as improving customer service, decentralization, market mechanisms, cross-functional collaboration, and accountability for results which have the overarching theme of improving governmental performance (Page, 2005). The current Wikileaks saga wherein the founder of Wikileaks is making public, classified public records, is in fact a reminder that the voice of an individual and the common public against the government is becoming popular and vociferous.

There is a new business approach that is now being taken in the determining the relation between the citizens and the government and citizens are now viewed as citizens. Therefore, providing information is seen as a service that needs to be provided to citizens. Every government has to be aware of information in its related fields such as freedom of information, citizen’s access to information and the administration of information. Accessibility has to be a keyword. Woodrow Wilson has said that, “Liberty has never come from the government…The history of liberty is the history of the limitation of government power, not the increase of it.” (Simon, 1978). In the Canadian context (1979, report) also there was a need to instill confidence among the public as to the intentions of the public. For instance the belief of Canadian citizens that government employees do not go out of their way to meet citizen’s needs. A similar deeply entrusted assumed apathy on the part of the Indian bureaucracy exists in India and till the time such a belief is not refuted to be falsely
based in the future, a need for sanctions, ombudsmen and access legislation will always exist and will fail to fully satisfy the situation that exists. Also in this report is the quotation cited in the context of the merit principle which states that, “It may appear to some a formidable, if not impossible task, to achieve the state where almost every contact made by a member of the public with a federal employee leaves that person proud of, or atleast satisfied with, the caliber of the public service. The task may well be formidable, which is all the more reason why it must be tackled. Good public relations must be addressed with the skill and vigour that has produced the high standards that exist not only in many parts of the private sector but to a more limited degree in parts of the public services as well.” (Stated by Canadian Minister of Supply and Services, 1979)

**Research Methodology:**
In this section of the chapter, the research questions and objectives of the study are restated and analysed to fit into the research framework that has been prepared for the study. The main objective of this study is to test whether the Right to Information Act 2005 has been able to impact the bureaucracy in a manner so as to bring accountability and transparency in the system. The Right to Information has to be studied within the framework of accountability in the changing nature of the state. It has attempted to redefine traditional accountability and contours of a rational legal state held by parliamentary accountability. In the present study, certain broad areas have been identified which form the basis for the research. The research questions and research objectives are derived from these broad areas. The following are the main areas identified for the present research:

1. The Right to Information Act 2005 as a tool for accountability and transparency.
2. The Right to Information Act 2005 as a facilitator of democratic values.
3. Increased peoples’s participation as a result of the Right to Information Act 2005.

For any research, it is important to first frame the research questions that the study seeks to answer. In the present study also, certain broad research questions have been framed which provide the general direction in which the study progresses. These research questions provide the over-arching guidelines for the study and the research
work that has been carried out by the researcher remains within the ambit of these research questions.

**Research Questions:**

- Has the RTI been an effective tool to address the problems of citizen empowerment through accountability?
- How does the absence of an in-built redressal mechanism in the Act impact the core objectives with which the Act was promulgated?
- What are the key areas of conflict between the quasi-judicial mechanisms provided for in the Act and the judicial redressal mechanisms available to the citizens at large?
- What are the key problems with the exemption clause of the Act?
- What has been the response of public officials towards RTI? Is this in any way different for different kind of services?
- What is the role of RTI in redressing internal (departmental) and external (with people) accountability?

The above being the research questions of the study, the research objectives also needed to be framed so that the study could be carried out in a systematic manner. The following are the research objectives that have been framed for the study.

**Research Objectives:**

- Critically examine the Right to Information Act 2005
- Establish the theoretical links between RTI and key concepts of accountability and democracy
- Delineate the key areas of conflict between the quasi-judicial mechanisms provided for in the Act and the judicial redressal mechanisms.
- Delineate the core problems with the exemption clause of the Act.

Therefore, in meeting the above mentioned research objectives and finding answers to the research questions, several indicators were developed to further enhance the study. Some of these indicators are as follows:

- *The Right to Information Act 2005 as a tool for accountability and transparency.*
>
> • Record keeping in public offices.
> • Timely disposal of RTI applications.
> • Speaking orders by public officials.
> • Openness in decision making.
>
> • *The Right to Information Act 2005 as a facilitator of democratic values.*
>   ➢ Assertion of citizen’s rights.
>   ➢ Involvement in decision making.
>   ➢ Bureaucracy and public service.
>
> • *Increased peoples’s participation as a result of the Right to Information Act 2005.*
>   ➢ Number of RTI applications filed.
>   ➢ Number of appeals filed.
>   ➢ Number of complaints filed in the Central Information Commission.
>
> The initial step towards structuring an appropriate research methodology for the study involved identifying sources of primary and secondary data. The aim of the study has been analytical, contextual and exploratory. Both primary and secondary sources of data had to be used for this purpose. In the primary sources of data collection, various methods were involved. Mainly the following broad kinds of methods were used:

1. Qualitative methods such as interviews, questionnaires etc. were used.
2. Comparative research methods were also used which have been elaborated below.

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. The available
secondary data in the form of right to information applications, appeals, orders of public information officers, etc. had to be analysed in detail to arrive at conclusions of the research. Records of the concerned public authorities were studied and analysis was made from the observations made from the data. Many Supreme Court and High court judgments had to be referred to understand the background of the Right to Information act. The Right to Information act has created various tiers of hierarchy within the ambit of the Act consisting of public information officers, appellate authorities and others who had to be contacted to gather first hand information. The researcher used qualitative methods for collection of data and various interviews and meetings were conducted with the persons concerned to gather first hand information about the act. The thesis encapsulates, inter alia, legislative and implementability issues pertaining to the right to information act. Various strategies were used by the researcher to collect the relevant research material. Appointments were sought from senior functionaries of the right to information act, interviews and meetings were conducted with them. Various meetings/ discussions were held with officials dealing with the Right to Information Act. Many discussions were held with applicants and officials appointed under the right to information act over the period of the research. This time frame spanned from a period of middle of 2009 till end of 2011.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Officials/Institutions with whom meetings were held</th>
<th>Date/ Year of the meeting</th>
<th>Topic of discussion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Meetings with various applicants under the RTI act.</td>
<td>August 2009</td>
<td>Reasons for filing RTI application, satisfaction level from the response received, further action taken, if any.</td>
</tr>
<tr>
<td>2.</td>
<td>Meetings with certain special category of applicants such as applicants below poverty line.</td>
<td>August 2009 to October 2009</td>
<td>Any specific or peculiar problems faced by applicants under the below poverty line.</td>
</tr>
<tr>
<td>3.</td>
<td>A number of meetings with Prof. Jack Balkins, founder member of the Yale Information Society Practicum, Professor of</td>
<td>October 2010 to March 2011</td>
<td>To understand the workings of the Freedom of Information Act 1966 of USA and to analyse the ongoing struggle</td>
</tr>
<tr>
<td></td>
<td>Law at Yale Law School.</td>
<td>to preserve the true spirit of the same.</td>
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<tr>
<td>4.</td>
<td>Discussions with Prof. Laura De Nardis of Yale Law School</td>
<td>October 2010 to April 2011</td>
<td>To understand the work of freedom of information advocates in their effort to maintain levels of transparency in the government.</td>
</tr>
<tr>
<td>5.</td>
<td>Meetings with Prof. Julia Adams, Political Science Department, Yale University, U.S.A.</td>
<td>August 2010 to June 2012</td>
<td>Accountability and transparency in the backdrop of the Right to information act and comparative analysis between the Freedom of information acts of various countries.</td>
</tr>
<tr>
<td>6.</td>
<td>Collection of data from RTI activists in India who have worked closely in the area of right to information for the common man of India.</td>
<td>July 2011 to December 2011</td>
<td>To gather information from grassroot workers about the workings and implementation of the right to information act in India.</td>
</tr>
<tr>
<td>7.</td>
<td>Meetings with Public Information Officers appointed under the Right to Information Act 2005.</td>
<td>July 2012 to December 2012</td>
<td>To understand the issues in the execution of the act and the changes brought about by the implementation of the Act.</td>
</tr>
</tbody>
</table>

The various indicators of the research were tested through the above interactions. Timely disposal of RTI applications was one indicator. The right to information law prescribes certain minimum time limit for the disposal of applications by the public authority. In most cases, this time limit is 30 days, within which the public authority is obliged to provide information to the applicant. In some extraneous circumstances it may be reduced to even 48 hours, such as when there is a threat to the life and liberty of an applicant. The time period within which the public authority has disposed of the
RTI applications is an indicator of the effectiveness with which the Act has been implemented in a particular public authority.

The act prescribes that information which is available with a public authority must be provided to the applicant as per the stipulations of the RTI act. In case the request received pertains to another public authority, then it may be forwarded to the concerned public authority for its reply. The number of applications that have been forwarded by a public authority to other public authorities are also a subject of this study.

In case of the applicant being unsatisfied with the response of the Public Information Officer, because of the information provided being incomplete or if information is not provided to the applicant, the act provides for an appeal to be filed before the appellate authority within the public authority. The appellate authority is obliged to respond to the appeal within a minimum stipulated time and to address the grievance of the applicant. The number of appeals filed with the appellate authority and the disposal of the same is another indicator to test the implementation success of the Act.

The manner in which records are maintained, before and after the promulgation of the Act is another indicator of the changes that have occurred in the bureaucracy. These changes are the result of efforts to make public functioning transparent and accountable. The analysis of records kept in public offices prior to the promulgation of the Act show a different picture than the records that have been maintained after the act. More speaking orders are being issued and justifications are given for decisions that are made in public functioning. Record keeping is being given more importance after the implementation of the RTI act and this is an important indicator in the research.

Comparative research methods were also used in the research. The researcher made a comparative analysis of the RTI act of India with freedom of information clauses of other countries. For this the researcher was fortunate to get an opportunity to refer to books, journals and other research material at the library at Yale University, USA and the Yale Law School library. These libraries are a rich reservoir for material on the freedom of information laws of various countries around the world. Rare manuscripts
and confidential documents were available in these libraries which enabled the researcher to elaborate upon the comparative study. Information about freedom of information laws of various countries was easily accessible, making the task of the researcher much easier. Since the Right to Information Act is fairly a new piece of legislation in India, the comparative analysis with other countries throws light on the current issues in the execution of the act and the prospective problems that could come up in the future. The researcher was a part of the Yale Information Society Practicum, which is an organization of faculty, researchers and students at the Yale Law School, U.S.A. who work on current topics and issues in the area of freedom of information laws. They hold discussions every week in which there are eminent discussants from the field of information laws. They also have access to various other resources and seminars and conferences are held on a regular basis, which generate a lot of food for thought. Latest issues in the area are discussed and debated. This was an enriching experience for the researcher from the point of view of this research, since a lot of ideas were generated through these discussions. Many international scholars who work in the field of information laws are invited and discussions and deliberations with them have enabled the researcher to analyse the topic at hand in a better manner.

As given in the table above, the researcher spoke with various activists in the area of freedom of information laws and also some scholars and public officials who are responsible for the execution of the RTI act. The officials were questioned about the manner in which they are implementing the act. The modus operandi that the public officials have adopted for executing the act was asked in detail from the public officials. The public authorities were given an initial period of 125 days to implement the act during which they were expected to do the needful, as prescribed under the act; such as appointing public information officers, putting up all public records on the public authorities website, arranging the records of the public authority in a proper manner, appointing the appellate authority etc. The efficacy and promptness with which the public officials have been able to do this has been questioned through the personal meetings and interviews. These interactions were useful for the study in many ways. By understanding the workings of the right to information act in various public offices and other countries, good practices could be identified and replicated in places where it is needed.
Questionnaire: The researcher circulated a questionnaire to a few public officials and activists to gauge their response to the right to information act.

Scope of interactions:
Field interactions of the researcher with public officials, faculty, researchers etc. were focused mainly on the following main issues:

1. The key issues faced in the implementation of the act.
2. The changes that had to be brought about while executing the act. These changes could be in the records of the public authority or, in the hierarchy of the authority or, in the attitudes of public officials.
3. The initial problems faced in the implementation of the act.
4. The kind of right to information applications that are filed before the public authority.
5. Shortcomings that exist in the system and if any efforts are taken to even out the shortcomings.
6. The appeals structure that has been established by the public authority.
7. The reasons for which the applicant goes into appeals and whether the appeals redressal system has been able to cater to the same.
8. How the current technologies have been able to assist in the execution of the act.

The results of the research are given in detail in chapter V of the thesis.

Instruments of research:
To make an analysis of the impact of the Right to Information Act 2005 on various broad aspects, as enumerated earlier in the chapter, various instruments of research were used. The analysis was mainly on the issues whether the Right to Information Act 2005 is a useful tool for accountability and transparency, the Right to Information Act 2005 is a facilitator of democratic values and increased people’s participation as a result of the Right to Information Act 2005. Rather than using properly structured interviews, the most common method used with a lot of people who were interviewed was, semi-structured interviews. Semi-structured interviews start with more general topics rather than specific questions and this helped the researcher in getting
information where otherwise the respondent was reluctant to talk freely. Some public officials were not very open about what they feel and it was easier for the researcher to gauge their responses through semi structured interviews since in such interviews it is possible to both give and receive information, which made the task of the researcher much easier in such circumstances. The conversational method which allows for two-way communication was found to be much better in these kind of situations where there was reticence on the part of the respondents. The interview method was used in collecting data from activists, RTI applicants and specialists in this field who were willing and able to provide information on this topic.

The topics covered in the semi-structured interview were as follows:

- The reasons that lead the applicants to file RTI applications.
- The kind of attitudes that the RTI applicants had to face from public officials.
- Whether the applicants found the procedure to be friendly.
- The changes that the public officials had to bring after the promulgation of the Act.
- The attitude of the lower level public officials that Public Information Officers found to be a barrier in the free flow of information.
- Whether the understanding about the Act is clear amongst the public officials.
- Satisfaction level amongst the RTI applicants.
- View of the RTI activists about the manner in which the Act is being implemented.

**Data analysis:**
Considering that the tools used for collection of data and the strategy used was mostly qualitative in nature with a case study approach, therefore the data analysis also fell on the same lines and was a corollary of the data collected.

**Limitations of research:**
There were certain constraints and restrictions of the research that the researcher had to face during the course of the study. The Right to Information Act is not an antiquated piece of legislation for which a whole lot of data was be available. In comparison with some other acts, it is actually a very young piece of legislation, for which not a large amount of data is available. Moreover, the data that is available for
the research, is very mixed and jumbled, without usually having coherence. As is the case with most research, no single source of data could be identified. Both primary and secondary sources of data had to be used for data collection. The primary sources of data are mainly applicants who file RTI applications under the act and the public information officers who are responsible to answer to the applications received in a public authority. In fact, the entire public authority is responsible for answering the RTI applications and each officer to whom an RTI application is forwarded becomes deemed PIO for the same. During the course of the study, the researcher found that the public information officers were at times not aware of this dual responsibility. Moreover, during the course of the research, the researcher found that the applicants were ill educated about how to use the act to their advantage. Moreover, the public information officers were also not well aware of their duties and responsibilities under the Act and were initially reticent to talk to the researcher about the questions posed to them for the purpose of this research.

The field work was carried out in the Delhi Secretariat, which is a large and scattered entity. It was difficult for the researcher to gather coherent information about the functioning of the act from the humongous system that prevailed.

The orders of the appellate authorities and the Central Information Commission had to be studied in detail by the researcher, for the purpose of the study. However, many conflicting orders from both the appellate authorities and the Central Information Commission made the researcher’s task very challenging.

**Conclusion:**

It is in the backdrop of the above theoretical framework and literature review that this research seeks to analyse the present research problem through various methods that are elaborated in the coming chapters. 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 are sought to be examined by this research.
The various theories that have been enunciated above have been examined in great detail in the forthcoming chapters such that the hypothesis of the research can be tested against these.

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