CHAPTER 6
CONCLUSION AND SUGGESTIONS

The Act begins with the citizen’s right to obtain information and ends with the information being made available to him or his request being justly rejected on the grounds recognized by the Act; what happens before and what may be the consequence of the information being made available or rightfully denied is a matter beyond the operation of the Act.  

The regime of exemptions is at the heart of any system for the right to information because it represents the dividing line between openness and secrecy. It is also one of the most difficult parts of the right to information system to develop, because of the inherent complexity of interpreting and applying exemptions. This is because the right to access information is controlled by the concept of exemptions, which by itself is still not properly understood. In this respect, this research highlights a number of clear conclusions.

6.1 Conclusion

The denial of the requested information can only be in terms of exemptions, provided in the Right to Information Act. This research shows that the adjudicating authorities have imported new exemptions other than those that have been provided under the Act and thereby denied the information. There is no scope for the adjudicating authorities to import new exemptions other than those that have been specifically provided in the Act. This research further shows that the understanding of the regime of exemptions remains weak in India. It is also clearly inferred from this research that the way the exemptions are understood varies considerably among different public authorities and is even interpreted differently by various information commissioners.

At this initial stage of working of right to information in India, it is reasonable to say that appreciation of the regime of exemptions remains fragile, so far. Formally, the law on right to information is at the pinnacle of the regime of exceptions, both because it represents lex specialis in relation to access to information and also it is lex priori. It does not preserve

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1 Pritam Roy v. University of Calcutta and Others, AIR 2008 Cal 118

2 Lex specialis is a Latin phrase which means “law governing a specific subject matter”. It comes from the legal maxim “lex specialis derogat legi generali”. This doctrine relates to the interpretation of laws. It can apply in both domestic and international law contexts. The doctrine states that a law governing a specific subject matter overrides a law that only governs general matters. Generally, this situation arises with regard to the construction of earlier enacted specific legislation when more general legislation is passed after such enactment.

3 Lex priori
exemptions in other laws, keeping in view the provisions in Section 8(2) and Section 22. It subjects the exemptions to stringent new standards, namely the consequential harm and the public interest overriding test. This research shows that what is being done at the present, falls short of sufficient compliance with law and more efforts to understand and to implement the same letter and in spirit are required to be made. The Act is a complete code in itself regarding access to information.

Any refusal of information has to be made only on one or more grounds mentioned in Section 8 (1) or Section 9. The Act gives no choice to the adjudicating authorities to ingress new exemptions other than those that have been provided under the Act and thereby deny the information. In a democracy the government belongs to the people and therefore the rights to access information has to be zealously guarded. ‘Since in Section 3 it has been stated that subject to the provisions of this Act, all citizens shall have the right to information’, it follows that denial of information can only be done on the basis of the exemptions in the Act and no other grounds for denial are valid’.4 -The umbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exceptions may be conjured up by any strained devise of construction’.5

Despite this, the research suggests that most officials have continued to take more-or-less the same approach to confidentiality as they did prior to the adoption of the Right to Information Act. This is the case whether they are relying on exemptions in the law on access to information i.e. Right to Information Act, or simply reflecting the previous culture of secrecy, and relying on unfounded reasons for refusing to disclose information such as refusing information because it was kept secret in the past. The fact that the information has always been considered secret in the past is irrelevant. Clearly this is problematical for the right to information and efforts need to be taken to raise awareness, particularly among key players such as public information officers, appellate authorities and information commissioners about the way the new legal regime, i.e. the law on right to information, interacts with the older legal rules that officials have become adapted to working with.

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4 This principle also applies to the construction of a body of law or single piece of legislation that contains both specific and general provisions. Source: http://definitions.uslegal.com/lex-specialis/

5 Where a latter law conflicts with an earlier law, it is the latter law that will prevail. Usage: The court applied the rule of construction lex posterior derogate priori to determine the conflict in provisions between the two statutes.

6 Mangla Ram Jat v. Banaras Hindu University, CIC/OK/A/2008/00860/SG/0809

During this research it has been observed that decision makers while denying the access to information at times are relying on considerations which are extraneous to the provisions of Right to Information Act. Their understanding of the exemption provisions of the Act is still a grey area and there are large number of instances where the public information officers or appellate authorities or the information commissioners have refused to disclose information on the basis of their prejudices and on extraneous considerations and not on the basis of express provisions of the Act. The Act gives no room to any of those authorities to rely any new exemptions other than those that have been specifically provided under the Act and thereby denying the information.

The research also indicates that in some cases the decision makers have not appreciated prejudice based exemptions in the right earnest and these have been exempted as a class without taking into account the prejudice. Some categories of information are not exempt as a class but only the information which prejudicially affects the protected interests are exempted. It has been seen that decision makers have interpreted exemptions in a very broad and wide manner whereas these are to be interpreted strictly and narrowly as per the scope of the exemptions provided in the Right to Information Act.

In this research a peculiar anomaly has also been noticed where the decision makers have refused information on the ground that disclosure of requested information would not serve any public interest. The provisions of the Act are the other way round. There is no requirement in the Act that for disclosure of information public interest is to be proved by the requester when it is not covered in any of the express provisions of the Act. Rather it is against the basic principle of maximum disclosure enshrined in the Right to Information Act.

In some cases, it may be difficult to reconcile some earlier laws with the provisions of the Right to Information Act, 2005 and this is one of the major causes of misinterpretation of exemptions by the decision makers. There may be a case, for example, where some laws provide for very clear blanket rules on secrecy. Although the Right to Information Act has overriding effect as provided in Section 22 that “the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act,” the pre-existing provisions in these laws providing for secrecy or non-disclosure of information are creating confusion in the minds of decision makers. Clear guidance for interpretation can certainly be used to limit this problem but, over the
time, there is need to review these pre-existing laws and amend them, as necessary, to bring them in line with the Right to Information Act to avoid any confusion. Getting muddled on account of such provisions in other laws even conflicting judgements have been given by various information commissions and by different information commissioners in the same commission.

This research also perceives that the way the exemptions are understood varies considerably among different public authorities and at times even among different individuals within those authorities. The former is to some extent based on the different legal regimes of secrecy which apply to different authorities, as well as the very different roles they play in society, types of information they hold and interactions they have with members of the public. This has led to a patchwork of varying degrees of openness among different public bodies. In case of information commissioners it has been observed that due to lack of proper understanding about the scope of exemptions, different rulings have been given on the same issues. Once again, this is problematic from the perspective of the right to information. It will also, in due course, create embarrassment and difficulties for the government, as the public becomes aware of the different approaches in different public authorities and starts to react against it.

This research reflects that some officials are tempted to claim as many exemptions as possible in an attempt to slow down or prevent the release of information. Officials use false claims that they are considering the public interest override to try to assess how the requester intends to use the information, which is something the requester need not do under the Act. Special obstruction tactics are used against requesters that are considered to be problematical, such as the media or advocacy groups. Legally, it is hard to contest these practices because, formally, they do not represent a breach of the law as long as timelines are respected. However, they clearly represent a bad faith form of engagement by public authorities with the right to information and they are to be discouraged.

This research also reveals that in some cases, an overbroad approach to the regime of exemptions may be based not only on a lack of awareness or understanding. In some cases, factors like embarrassment or political considerations, or even a desire to cover up corruption or wrongdoing, may play a role. This is to some extent an inevitable result, and one which plays out in many, perhaps all, countries. At the same time, it is important to limit it as far as possible.
This research also indicates that there is scope for considerable improvement in the procedures by which exemptions are applied and, in particular, in the way in which the consequential harm and public interest balancing tests are applied. The evidence suggests, for example, that officials are not rigorous in their attempts to identify clear harms that are likely to flow from the disclosure of information, or the various public interest considerations that are involved, before they decide that information falls within the scope of the regime of exemptions. In part this flows from a lack of real understanding about the underlying concepts of consequential harm and public interest, particularly as they relate to the disclosure of information.

There are three different kinds of larger public interest tests provided in the Act; larger public interest warranting disclosure of specific information as in Section 8 (1) (b) and 8 (1) (e); larger public interest justifying the disclosure of information such as Section 8 (1) (j); disclosure may be allowed if the public interest in the disclosure outweighs in importance any possible harm or injury to the interest of third parties (proviso to section 11(1)). Legislature has used different languages in these larger public interest requirements for disclosing information. In this research it has been noticed that the decision makers have not differentiated the substance and requirements of these tests properly and have casually applied provisions in the larger public interest tests. The jurisprudence on these aspects of larger public interest has also not developed so far in the context of the Right to Information Act.

It is specifically mentioned that the requirements of law are not being followed in many cases by public information officers or appellate authorities or information commissioners. While deciding on access to information requests the public interest override test requires weighing of public interest factors in disclosure as well as weighing of harm to the protected interests and carrying out balancing exercise. This is a complex process and the Act has not specified any objective criteria and procedure to apply. Keeping in view the requirements of the Act, this exercise is to be carried out and accordingly determinations are to be made by the public information officers. In the Act, exemptions provided in Section 8(1) represent one or the other protected interest which would be harmed in case the information is disclosed. This is also in public interest to avoid harm to the protected interests, so decision makers have to evaluate the harm to the protected interests in disclosure of requested information and this has to be balanced with the public interest in disclosure.
This research clearly establishes that there have been, so far, only quite limited opportunities for the overseeing bodies—namely the information commissions and the courts—to develop a detailed jurisprudence for interpreting the exemptions. This is an extremely complex matter and this research demonstrates that India has a long way to go before it reaches the sort of understanding about the scope of exemptions that one finds in the jurisprudence of other countries, particularly those with longer-standing right to information laws and also some other countries, where an enormous amount of social attention has been devoted to this problem. There should be clear objective tests to determine the same and it should not to be left to the subjective satisfaction of the concerned authority.

In this research it has been observed that public authority and public information officers are refusing access to information solely on the purported ground that it is covered in a particular exemption without applying consequential harm and public interest override test. The information covered under exemptions can be disclosed if public interest in disclosure outweighs the harm to the protected interests. For information to remain exempt finally it has to be shown that public interest in disclosure would not outweigh the harm to the protected interests which is inherent in the applicable exemption. All exemptions provided in the Act, under Section 8(1) are subject to public interest override test. The ‘public interest override test’ has to be applied mandatorily to these exemptions for making a determination whether finally the requested information is exempted or not.

In a large number of decisions by public information officers or appellate authorities or information commissioners, the public interest override has not been applied as provided in Section 8(2) where the public authority may allow disclosure of information if public interest in disclosure outweighs the harm to the protected interests. It has been observed that whenever an exemption as provided in Section 8(1), is applicable to the requisite information, same is denied outright without applying the public interest override test as provided in Section 8(2). For information which is prima facie exempted under Section 8(1) of the Right to Information Act, there is mandatory requirement to apply public interests override test and if public interest in disclosure does not outweigh the harm to protected interests, the requested information could be finally exempted.

This research also manifests that for applying public interest test in letter and spirit of the Right to Information Act, it is necessary for the decision makers to understand the concept of public interest clearly. The Right to Information Act has been criticised for not
defining the term public interest as it is posing difficulties in understanding various provisions of the Act particularly in interpreting the scope of exemptions and in applying public interest override test. It has been contended that public interest should at least have been explained by way of illustrations. Right to Information Act does not define public interest. Apparentely, this is intentional to give flexibility in interpreting the term public interest in the context of right to information. The public interest is an amorphous concept and the questions involved in identifying ‘public interest’ are complex and inevitably rather subjective.

This research exhibits that the concept of ‘public interest’ in context of the Right to Information Act, 2005 is wide-ranging, vast and expansive. A classic dictum of Lord Hailsham that ‘the categories of public interest are not closed, and must alter from time to time whether by restriction or extension as social conditions and social legislation develop’ is equally applicable in the context of right to information in India. This principle is recognised in all overseas jurisdictions. ‘Public interest’ is not an entirely nebulous or unstructured concept though it is not defined in the Right to Information Act, 2005. This flexibility is intentional. Legislators and policy makers recognise that public interest will change over time and according to the circumstances of each situation. In the same way, the law does not try to define categorically what is ‘reasonable.’ In other regimes also, such as, the freedom of information legislations of Australia and Canada, the term has not been defined specifically although guidelines on application of public interest test have been attempted.

There are many areas of national and community activities which may be the subject of public interest. The statute does not contain any definition of public interest. Nevertheless, used in the context of this statute, it does not mean that which gratifies curiosity or merely provides information or amusement. Similarly, the Right to Information Act does not define ‘public interest’ as well as what is ‘in the public interest.’ Similarly, it is necessary to distinguish between ‘what is in public interest’ and ‘what is of interest to know.’ The interest

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8 The Task Force that recently reviewed Canadian legislation also concluded that the public interest should not be defined in legislation.
9 The Australian Law Reform Commission did however recommend that guidelines be issued by the Information Commissioner on what factors should or should not be taken into account in weighing the public interest. In 2000, the Attorney General’s Department issued a memorandum on the exemption Sections in the Freedom of Information Act. This contains lengthy guidance on the application of the public interest test. Attorney General’s Freedom of Information Memoranda: Memorandum No 98 Exemption Sections in the Freedom of Information Act.

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of the public is distinct from the interest of an individual or individuals. There are several
different features and facets of interest which form ‘public interest’. On the other hand, in the
daily affairs of the community events occur which attract public attention. Such events of
interest to the public may or may not be ones which are for the benefit of the public; it
follows that such form of interest *per se* is not a facet of public interest.

This research provides some firmer guidance on public interest considerations, such
as: detecting or exposing crime or a serious misdemeanour; protecting public health or safety;
preventing the public from being misled by some statement or action by an individual or
organization; exposing misuse of public funds or other forms of corruption by public bodies;
revealing potential conflicts of interest by those in positions of power and influence; exposing
corporate greed; exposing hypocritical behaviour by those holding high office.

This research indicates that decision-makers will need to identify which section or
sections of society are affected when applying the test. The ‘public’ is not defined in the
Indian Right to Information Act. Mostly the term has been used in the geographic sense. This
research suggests that there is clearly public interest *per se* in access to information held by or
under the control of any public authority.

This research concludes that there is a need to evolve a model for conducting public
interest override test in the context of the Right to Information Act. The public interest
override provisions in the Right to Information Act have a slightly different formulation
compared with different overseas jurisdictions where it is provided in one form or the other.
The three part public interest test followed in the international standards can be the basis for
evolving a model and a procedure for conducting consequential harm and public interest
override test in the context of the Right to Information Act, 2005. A four stage model has
been proposed in this research. The object of the public interest override test, i.e., a balancing
exercise between consequential harm to the protected interests and public interest in
disclosure is to work through the competing tensions between the relevant factors favouring
disclosure and the relevant factors favouring nondisclosure including the harm to the
protected interests and to come to a conclusion about whether the factors favouring
nondisclosure are strong enough to establish that it would be contrary to the public interest to
disclose the information. The Right to Information Act has not prescribed any procedure for
applying the public interest test.
This research clearly suggests that this model for carrying out consequential harm and public interest override test, will be of immense help in making good assessment of risk of harm in disclosure of information, identifying public interest factors in favour of disclosure, carrying out balancing exercise properly and making a reasoned decision which is otherwise a mandatory requirement of the Act.

In a large number of decisions studied in this research, it has been reflected that decision maker have not given reasons for their decisions which is an outright violation of provisions of this Act and is also in gross disregard of the principles of natural justice. This principle has been laid down by the Apex Court in several cases and has been reiterated in a recent judgment. Not giving reasons in decisions, on the one hand, takes away the opportunity given to the requester of the information to understand the rationale behind the decision to refuse his request for the information and on the other hand it puts the decision makers in an embarrassing situation to justify the same once these decisions are disputed either under review or appeal and deprives the higher forum or court from appreciating the merits or otherwise of the order.

This research also supports the view that by raising awareness among decision makers about the practices followed in overseas jurisdictions regarding consequential harm and public interest considerations, valuable help could be availed of from their established track record in assessing the risk of harm and public interest in disclosure in the local context. It is important to get away from past practices and prejudices when applying the right to information legislation. It is important to understand that in some cases these problems were at least in part a result of the fact that, in seven years of implementation of the law on access to information public bodies did not have a manual or guidance in applying the consequential harm and the public interest test in assessing whether information was exempt. The Right to Information Act itself does not explain how to apply these tests. At the beginning of the process of implementing the right to information law, it will be difficult for officials to make good assessments of the risk of harm from disclosing information. This is because they do not have experience with this, and because it is not always easy to conclude, even after a good faith assessment, whether or not harm is likely to occur. As a result, it is very important to try to provide assistance and tools to officials to help them make these assessments. For example, experience in other countries has established that certain categories of information should not be protected, such as the main provisions in public contracts with private companies. Raising
awareness about established track records elsewhere can help guide officials in assessing the risk of harm and public interest in disclosure in the context of the Right to Information Act.

This research further advocates that it is imperative in carrying out the larger public interest test and public interest override test to determine irrelevant factors which need to be discarded, relevant public interest factors in favour of disclosure of information and relevant factors in favour of non-disclosure of information. To balance the factors, the decision maker has to refer to the factual circumstances of the application and consider the importance of any applicable public interest consideration in the context of the application, each relevant factor favouring disclosure; relevant factor favouring non-disclosure; relevant public interest harm. The decision maker has to further compare the importance of the relevant public interest factors favouring disclosure and nondisclosure (including harm to the applicable protected interest) and come to an overall conclusion about the importance of the factors favouring disclosure versus the importance of the factors that favour nondisclosure.

The Act does not specifically list factors for public interest in disclosure of information. This is an area where the decision maker has to prudently find out the public interest factors in favour of disclosure and also the public interest factors for non disclosure other than the public interest to avoid harm to the protected interests. This is a complex exercise for which no guidance is available either from the information commission or from the ministry/department responsible for implementation of the Act. There is no manual/guidance available as to what may be public interest factors in disclosure of information and public interest factor in non disclosure of the information. How to evaluate their weightage is equally complex. This problem needs to be addressed for implementation of Right to Information Act in proper perspective so that exemptions are understood by the decision makers in the right spirit by applying public interest override test properly and deciding whether to disclose the information or to withheld the information keeping in view the public interest involved.

After considering a large number of decisions both in overseas and local jurisdictions, this research clearly establishes the fact that there is no complete list of public interest factors for or against disclosure. This will depend on case to case basis taking into consideration the content, context and purpose of the requested information including its time specific variability within the laid down parameters. It is a more complex process to identify the public interest factors in disclosure and non-disclosure of the particular information that has
been requested and also in identifying and evaluating the harm to protected interests. The questions involved in identifying the ‘public interest factors’ are complex and inevitably rather subjective. Indeed, the ‘public interest factors’, when used in the context of right to information, classically impart a discretionary value judgment to be made by reference to undefined factual matters, confined only in so far as the subject matter and the scope and purpose of the statutory enactments may enable.

This research acknowledges that it is the responsibility of the decision-makers in the Right to Information Act to identify these ‘undefined’ facts which make up the elements of the public interest in any particular request for access to information which involve a ‘public interest’ test. In so doing, the decision-maker draws upon decisions and case laws of both local and overseas jurisdictions where relevant public interest elements have been identified in a variety of contexts.

6.2 Suggestions

Given below is a tentative list of suggestions for addressing the problems noted above. In some cases, solutions are clear while in others some flexibility and experimentation will be needed to find an effective approach. For some problems, such as regarding the abusive application of exemptions for illegitimate goals, no particular suggestion is offered. Inasmuch as one of the key aims of the right to information is to root out such wrongdoings, some resistance to it can be expected. What is needed is greater vigilance and the proper application of the rules.

6.2.1 Awareness raising

There is an enormous need to raise awareness about the regime of exemptions, based primarily on the law on access to information i.e. the Right to Information Act. This involves different types of knowledge or awareness, including:

- the way in which the system as a whole works;
- the procedures by which exemptions should be considered and applied. For this purpose, objective tests should be laid down and it should not be left to the subjective satisfaction of the public authority;
- the substantive content of the various different exemptions.
An obvious means of addressing this need is through training. However, given the vastness of the need, such training needs to be strategic. It probably makes sense to focus first on key decision makers, such as public information officers, appellate authorities and information commissioners, and to include training in right to information in the ongoing training programmes that are offered to civil servants. Alternative forms of provision of training, for example through online courses, should also be considered.

Another way of raising awareness, or at least of building practical skills, is through the provision of tools to assist those responsible for implementing the Right to Information Act. To some extent this report represents one of those tools i.e. a model for conducting consequential harm and public interest test (as discussed in chapter 5). A number of other tools could, however, be considered. A short guide to applying exemptions, addressing both procedural and substantive issues might be useful. Specific practical guides for each exemption, starting with the more problematical ones, might also be useful. Notifications and circulars might be issue and published for public use. A digest of decisions of the information commissions and courts interpreting exemptions could be produced. The establishment of a hotline support centre for officials tasked with applying exemptions which could provide them with advice on this over the phone or via email is another option.

6.2.2 Standardising approaches

It can be quite challenging to try to develop standard approaches to interpreting exemptions across the whole range of public authorities. To some extent implementation of the other suggestions presented here, such as training and law reform, will help with this. Some specific ideas here include:

- Developing manuals or guidelines in applying the consequential harm and the public interest test in assessing whether information is exempt.
- Developing a network of public information officers, to help them share ideas and discuss issues, and more generally to help forge them into a community with shared interests and values.
- Identifying a central nodal point within government to set policy in the area of the right to information, including in relation to exemptions.
6.2.3 Law reform

It is important to gain a full understanding of the legal framework governing access to information. To do this, a comprehensive analysis could be conducted of all laws and other legal documents which include provisions which impose or even just promote secrecy or openness. Ideally, this should be broad in nature, including not only primary and secondary laws but also documents such as contracts between government and third parties, civil service employment contracts, and codes of conduct and other internal personnel rules for public employees.

Such a study could make various proposals depending on the nature of the provisions. In some cases, the most logical approach would be law reform. However, particularly for primary legislation, this is unwieldy and difficult to achieve. In other cases, interpretive solutions could be proposed which would reconcile any apparent conflicts between provisions on secrecy and the right to information. In yet other cases, other actions might be needed, such as reform of the standard templates for civil service or procurement contracts. A system of accountability for the public authority who unjustifiably denies information and a system of compensation to the affected information seeker might be introduced as is done in some overseas jurisdictions.

6.2.4 Development of the jurisprudence for the system

A key aspect of any regime of exemptions is the development of the system through jurisprudence in the form of decisions by overseeing bodies such as the information commissions and courts. To some extent, this takes place naturally, as cases are brought before these bodies. It is important that the initial decisions are as strong as possible so as to provide a solid basis for the development of the whole system. This is particularly important for the information commissions which need to establish their credibility. It must be remembered and emphasized that the decisions under the Right to Information Act are quasi-judicial in nature and must pass the benchmark of following the principles of natural justice, fair procedure and transparency.

Various activities could be undertaken to help these bodies come to good decisions in the cases before them. Further research on how key issues have been dealt with in other countries would be useful, perhaps in response to specific cases. International visits by staff and members of these bodies can also help to build networks and knowledge.
A number of challenges flow from the essentially responsive nature of this system. One is the risk of overload as the number of cases increases and the associated risk that all available resources are absorbed by the need to process the constant flow of new cases. This undermines the ability of these bodies to devote proper care and attention to those cases that raise important questions regarding the scope of exemptions. The solution would include developing good procedures for processing cases, for example joining cases that raise very similar issues, providing for summary disposal of obvious cases and trying to resolve as many cases as possible through the less time-consuming mediation procedure.

A second problem is that the system is somewhat random in nature, and may not allow for the structural elaboration of important questions relating to exemptions. To address this, alternative forms of jurisprudential development could be considered, such as official opinions on certain important questions or the facility of providing advisory opinions, i.e. opinions by reference rather than on the basis of an actual set of facts.

Additional suggestions:

It has been a matter of satisfaction that Right to Information Act has adequate ‘teeth’ to bring in transparency and reduce corruption. At the same time it is accepted that the Act has not yet reached the stage of implementation which was envisioned. However, it is still a matter of pride that we have given to ourselves a tool which has the potential to usher in transparency and reduce corruption. Notwithstanding the improvement requirements, the following achievements are undisputable:

- The basic tenets of the Act have been implemented and the institutional mechanism is in place and is in use by citizens.
- The institution of information commissions has assumed a pivotal position.
- The civil society organisations have been, and continue to be, active in ensuring the implementation of the Act in letter and spirit.
- The civil society organizations and the media have started using the Act for bringing in transparency and objectivity.
- The centre and state government departments have initiated the training of key functionaries to assume the responsibilities of public information officers and appellate authority.
- The government employees/public authorities are aware of the basic elements of the Act.
- Various state governments have taken up initiatives, which go beyond the stipulations.
It is acknowledged by all stakeholders that substantial amount of work still needs to be done. There are various issues and constraints involved in the implementation of the Act.

i) **Enhanced accountability and clarity in role**

For an Act to be successful, accountability and performance measures have to be unambiguously defined. In the absence of clear accountability and a measurement gauge, there is a high probability that the Act would not be implemented in true spirit. At the state/central level, there should be an ‘RTI implementation cell’ headed by a senior officer (who will be able to coordinate among various departments/ministries), which should monitor the reports/status on various issues related to RTI based on inputs from information commissions and the public authorities. However, from an operational aspect, the nodal (administrative) department should be responsible for coordination and administration.

It is implicit that at a public authority level, the implementation of RTI is the responsibility of the administrative head. Given the (a) current low level of implementation of Section 4(1) (b) and (b) low success in providing information within the stipulated time, there is a need for capacity-building within the public authority.

The administrative head may constitute/appoint public authority’s RTI Cell to proactively address the issues pertaining to implementation of access to information law and develop a roadmap for implementation.

There is a need for capacity-building at the national level to facilitate the central and state governments towards providing guidelines, establishing templates of standard rules, templates of various forms and suggested payment channels etc. Knowledge resource centers may be established which should be responsible for knowledge management, disseminating landmark cases, and developing common IT applications for information commissions and public authorities.

ii) **Improving RTI awareness:**

This Act implies empowerment of the citizens of India. Hence there is a responsibility of the appropriate government to create awareness among citizens of their rights under the Act. It is suggested that the government should establish right to information as a ‘brand’ through a mass awareness campaign. To take care of linguistic and local relevance, the awareness campaign is suggested both at central and state levels. The main objectives of the campaign may be to:
- Increase public knowledge and awareness
- Encourage citizen involvement and debate
- Increase transparency within the government

Awareness could be created within the government/public authorities by putting prominent displays at public authorities and making citizens aware of their rights. Also, it is suggested that the appellants be made aware of their rights and duties by putting up visual display boards at information commissions. A publicity campaign is also suggested.

iii) Improving convenience in filing requests

Most of the applications for information are filed at the government offices. A conducive and facilitative environment at government offices is a necessary condition to ensure that citizens are able to apply for and receive information in a convenient manner. Encouraging accessibility to information is one of the major changes management issues among government employees. For a government servant, there has been a significant shift from the ‘Official Secrets Act’ mindset to the ‘Right to Information Act’ mindset. In order to facilitate filing RTI requests/appeals, the alternate channels should be considered such as ‘common service centers’, RTI call centers, RTI portal, other e-governance initiative.

iv) Common infrastructure & capacity building

It is suggested that the information providers should understand how well-equipped the government/public authority machinery is to respond to the needs of the right to information. There may be various measures such as training/knowledge, use of IT and availability of basic infrastructure to address the limitations in implementation of the Right to Information Act.

v) Improving efficiency at information commissions

The appeal process is a key component of the Right to Information Act. It is one of the controls established to ensure that the information is provided to common citizens. The following suggestions are made for improving the disposal rate of complaints/appeals by information commissions:

a) Hearings through video conferencing: Since the information commissions are situated in state capitals, it is inconvenient for applicants to be present during the scheduled hearing. This problem assumes significance in cases of matters pertaining
to the central government, where the appellant has to travel to New Delhi. It is proposed that the information commissions use video conferencing as a mode of communication in such hearings. Video conferencing facility is available at each district headquarters which may be used for this purpose.

b) Opening information commissions offices at other locations: The CIC, as per Section 12(7) and SIC, as per Section 15(7), with the approval of the appropriate government should open offices at other locations, so as to reach out to the masses.

c) Use of software application for managing the processes at the information commission: This application should assist in improving productivity/efficiency in disposal of cases, drafting of orders, day-to-day office administration etc.

d) Induction training before assuming charge by new information commissioners: To facilitate the induction of a new Commissioner, where he/she does not have a background of law/quasi-judicial role, he/she should go through an induction period before assuming full charge.

e) Use of RTI compliant standard templates: It would ensure quick and reasoned orders to the appellant. It may be noted that the templates have a strong linkage to the Act and leave little room for errors.

f) Composition of Information Commissions: Various NGOs have expressed their discomfort about the method by which the appointment of information commissioners are made and about the tendency to appoint retired civil servants as information commissioners.

The Right to Information (RTI) Act specifies that “The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.” Therefore, it is obvious that the Act does not restrict these posts to former or serving civil servants. Besides, it cannot be assumed that a civil servant, just because he or she heads a state administration or a central government department is, ipso facto, a person of eminence in public life.

The information commission is the appellate authority under the Right to Information Act. Therefore, it would be called upon to objectively adjudicate on disputes between
the citizen and the government. If the commission is to be manned by retired chief secretaries or secretaries to the government of India, often the information sought to be accessed would deal with matters that were directly or indirectly under their charge when they were in service. Consequently, it would be difficult for them to be objective, and even more difficult to appear to be objective. Perhaps that is why there is a judicial convention where judges recluse themselves if there is the remotest possibility of a conflict of interest. In fact, there is now a healthy tradition of judges not becoming chief justices of their home states.

In order for the Right to Information Act to succeed, there has to be a change in the mindset of the bureaucracy. The law will only work if the bureaucracy accepts that they have a constitutional obligation to be transparent, and realises that it is no longer acceptable for them to block whatever information they can, subverting the spirit of the Act while abiding with the letter. However, this change in mindset will not happen if the information commissions are manned by other bureaucrats who not only share the existing mindset, but encourage it.

Most important, the process of identifying information commissioners must itself be a transparent one. Though the final selection is made by a distinguished panel, the government must be willing to publicly justify how these panelists meet with the prescribed qualifications and why they are among the best so qualified. The care has to be taken to ensure that those selected are truly eminent, suited to the job in hand and is not made to adjudicate matters relating to their own erstwhile departments or charges.