

CHAPTER-6

CONCLUSION AND SUGGESTIONS

“In this possibly terminal phase of human existence, democracy and freedom are more than just ideals to be valued-they may be essential to survival”

Noam Chomsky

Democracy cannot become a reality without participation of the citizens in the governance. Participation of the people is possible when there is a transparent government and the freedom to know about activities carried out by the government on behalf of the citizens. India's journey from the secrecy regime to the realm of transparency has been remarkable and it was the judiciary that gave legal protection to this right. Also equally laudable have been the roles of the media and the civil society organisations that played a key role in giving statutory recognition to this right.

Almost all the international conventions and regional instruments have been promoting voluntary disclosure of information and advocating for access to information. Today, majority of the countries have guaranteed and recognised right to information as their fundamental right. Those nations that do not have freedom of information as their constitutional right have adopted this right in their domestic legislations. These steps towards openness indicate the growing inclination towards transparent government.

The Right to Information Act, 2005 has done what Public Interest Litigations did in the 1980s in India. While PILs were craftsmanship of the judges, the credit of the Act has to be given to the legislators for making an extra ordinary attempt to bring in transparency in governance initiated by the common people. It has opened the doors for the citizens to scrutinise every action of the government and make them accountable for every action.

Although India's legislative framework of the Right to information Act is among the best in the world, its implementation has been lukewarm. It has failed to bring in the transparency that was desired. Lack of awareness, absence of voluntary disclosure, dearth of trained Public Information Officers, ambiguities relating to the definition of public authorities, exclusion of private entities, the increasing tendency of denial of information by the public authorities in the garb of exemptions, the laid-back approach of the public officials in providing information and inadequate number of Information Commissioners have been the major challenges in fulfilling the very objective of the Act. Even after thirteen years since the commencement of the Act, majority of the citizens are deprived of their cherished right.

Taking into consideration these factors, the researcher has undertaken the subject with several objectives in hand which includes among others, the journey of the struggle from secrecy to transparency, development of the right to information as a fundamental human right, a detailed analysis of its various provisions, its position in the international arena and also , the implementation of this law in the various countries across continents and the implication and challenges emerging from the various institutions and organisations on the exercise of this right in India.

On the basis of the voluminous data, primary and secondary, the researcher had tried to reach to the findings with relevant remarks under the work. The chapterisation of this research work is based on the hypothesis that **only change in the mindset of the citizens across all sections and compliance of the responsibilities by the public authorities mandated by the Act can fulfil the objectives of the Act and by making suitable amendments would further ensure efficacy to the Act.**

Another object of this research was to identify the existing perception of the citizens and the public authorities towards the Act for which the researcher had undertaken a survey as part of the empirical research in the four corners of India. The four cities chosen were - Delhi from the north, Kolkata from the east, Bengaluru from the south and Ahmedabad from the west. For the purpose of the survey, two sets of questionnaires were prepared for 50 Information Seekers and 50 Information Providers

from the various fields .The data so collected was further analysed to derive the findings.

Therefore, it has been deduced from the study that neither the citizens nor the public authorities have been able to make much use of the benefits of the Act. It should be noted here that people in all the four cities portray similar picture and have opined that they would prefer to pay a bribe than to file an application and wait for a period of thirty days to seek information. This clearly reflects the apathy of citizens towards the Act.

The empirical study has also revealed that the mandatory obligation of making proactive disclosure in public offices are seldom complied with and in the absence of effective mechanism for monitoring and reporting, the public officials conveniently shirk their responsibilities. Assistance and cooperation is rarely extended to the applicants by the PIOs in filing applications.

The study also suggests that only a small section of people avail this right in India. From such a meagre number of applications in comparison to the huge population of India, a good number of applications are either rejected under the exemptions provided under the Act or remain pending in the Information Commissions due to inadequate number of Information Commissioners defeating the purpose of the Act.

Presently, thousands of complaints and appeals are pending before the Information Commissions with inadequate number of Information Commissioners. Also significant number of decisions given by the Information Commissions are challenged before the High Courts and the Supreme Court that has remained pending for years.

Furthermore, many people have lost their lives in accessing this right and not much has been done for the protection of people who risk their lives for unmasking corruption within their department. The Whistleblower Protection Act, 2014 that, protects persons who exposes corruption in an organisation, has not been functionalised yet resulting in grave insecurity for the whistleblowers and the RTI activists.

In the backdrop of the above factors, there is an emergent need to develop a framework in order to ensure mandatory proactive disclosure in the public offices and

educate the people in making access to information a hassle free exercise. Also to achieve the same, necessary amendments may be made to the Act which are suggested below.

SUGGESTIONS

In perusal of the foregoing evaluative assessments, deduced from the doctrinal and empirical study, the researcher humbly submits the following suggestions:

Towards a Strategy for Awareness and Pro active Disclosure of Information

Although, there has been marked improvement in the approach of the public servants in delivering information to the citizens since the commencement of the Act, yet general awareness among the masses is scanty. From the empirical study, it is evident that till date, a large section of people are either unaware of the Act or they know nothing more than the existence of the Act. Paying a bribe is still considered the best alternative to get work done in public offices.

Moreover, ignorance about the RTI Act has given the advocates and private organisations a reason to flourish. One of such private organisations charge Rs.499 plus GST of 18% that amounts to Rs.583 for each application which is otherwise only Rs.10.¹ The researcher purposively availed the services from the organisation to get hands on knowledge of the services offered by the them. The application addressed to the FSSI (Food Safety and Standard Authority of India) on certain queries relating the mechanism adopted to ensure safety standards on foods made on December 18, 2018 was answered on February 10, 2019, precisely after 53 days. Meanwhile, after 30 days, the above mentioned organisation suggested filing a first appeal to the FAA with an additional fee of the same amount. It is to be noted here that filing of first appeal is absolutely free under the Act. This proves that ignorance of the procedure may lead to great disadvantage for the common man.

Therefore, attempts should be made for giving effect to the following:

1. All requisite information and all the details of the name and designation of the Public Information Officers and First Appellate Authorities should be displayed

¹ Online RTI *available at* : www.onlinerti.com (last visited on Dec 4, 2018)

in the public offices for the citizens to have easy access. A uniform standard form should be introduced by the government across all states and Central government offices for seeking information. Also the government in collaboration with the NGOs should spread increased awareness about the Act through mediums that are easily accessible to people from all sections of the society. It should mandatorily include the achievements made by the Act in the last decade and the success stories.

2. In a country like India where approximately 30% of the population is illiterate, information in websites almost remain inaccessible for many people who are still ignorant of the e – services. Although, the digital India programme by the government is a good start to digitise services but making people aware of RTI and e-filing of applications can save a lot of time and money. Therefore, the way people of India have embraced social networking irrespective of their socio – economic status, digital literacy should be promoted among all sections of the society to access information.
3. Proactive Disclosure plays a key role in fulfilling the object of the Act. All departments in compliance to the Act must voluntarily disclose all information and display them. In addition to this, the answer to questions in RTI applications that are sought frequently should be voluntarily displayed for wider access lessening the burden of public officials and reducing the number of applications for the same piece of information.
4. Ambiguities relating to the interpretation should be removed by making suitable amendments to definitions of terms like ‘public interest’, ‘life and liberty’ and ‘indirectly financed’ or ‘substantially financed’. The definition of ‘public authority’ should expressly include private entities carrying out public functions and enjoying a monopoly status.

Removing the Impediments of the Supply Side

Public Information Officers should ensure making information available and accessible to the citizens. Depending on the financial capacity, the government should

appoint full-time dedicated public Information Officers for disposal of requests under the Act. Till the time the following measures should be adopted:

1. Regular Orientation Programme for the Public Authorities should be conducted and appointment of junior and untrained officers as Public Information Officers should be barred. Since the PIOs come from varied backgrounds, they should be updated on the judicial developments for better implementation of the Act in their local languages.
2. The government departments seldom provide assistance to the information seeker and they often threaten them and discourage them to file applications. This attitude of the public officials should be monitored. Regular audits should be carried out to track the applications and render reasonable assistance to people seeking information especially the disadvantaged section.
3. The Act provides for punishment to public officials for denying information to the citizens within the stipulated time and also for giving wrong information. In the absence of any additional remuneration for carrying out such duties under the Act, the PIOs should be encouraged to undertake the responsibilities by introducing additional allowances and incentives for meeting targets that would include number of applications answered.

Prevention of Regressive Amendments to the RTI Act

Since inception, several attempts have been made to weaken the law by the legislatures. The proposed Right to Information (Amendment) Act, 2018 aimed at weakening the law by transferring the power of determining the tenure of service, salary and status of the Central and State Information Commissioners to the Central Government is yet another attempt to undermine the Act. Therefore, to prevent dilution of the law, such attempts of the government should be discouraged.

Transparency in the Functioning of Information Commissions

The Information Commissions or the second appellate authority has played a significant role in making information accessible to citizens. It has ensured compliance of the provisions of the Act in its true spirit. On many occasions, it has issued orders

against the policies of the government. However, the appointment of bureaucrats serving the governments as the Commissioners have been widely criticised. Majority of the Information Commissioners both in the Central and state Commissions are retired bureaucrats whereas the Act provides for appointment of people from various fields. Also failure in making timely appointment of the Information Commissioners and lack of transparency in such procedure further raises suspicion in the minds of the public. Therefore, appointment procedure should be made transparent and the government should ensure appointment of Commissioners from various fields.

The Act has made participatory democracy a reality however the rising number of pending cases is watering down the objective of the Act. Awareness about the substance and structure of RTI law and its functioning right from low level to the level of CIC is the need of the hour. Hearing of cases through videoconferencing is carried out by the information commissions which save time and money of the citizens as well as public officials. Therefore government offices should spread awareness about these facilities to all sections of the society. Non-compliance with the Sec- 19(8) (b) that provides for compensation to the complainants for their losses suffered by the Information Officers remains a major impediment. Therefore, increased awareness among the citizens about this provision can benefit them immensely.

Addressing Privacy Issues

The RTI Act protects the right to privacy of individuals unless such information outweighs public interest. The study reflects that this provision is being misused very often by the public officials. The Supreme Court through its judgement in *Girish Ramchandra case*² has diluted the provision of the Act depriving the people to exercise their legitimate right to know about the public expenses made by the civil servants. Therefore, this judgement allowing such wide application should be reconsidered by the judiciary. Also the emergence of technological advancement, has led to concerns regarding protection of personal data. The proposed Personal Data Protection Bill 2018 that provides for protection of our personal data overrides Right to Information Act, 2005 and other legislations impeding the application of the Act. Therefore, both the

² (2013) 1 SCC 212

rights being integrally fundamental should be harmoniously interpreted and amendments to override one over the other should be discouraged.

Implementation of Lokpal and Lokayukta Act, 2013

There is a wrong notion that access to information would be a solution to all problems as in practice it can be used only as a tool to reduce corruption and bring a shift in the mindset of the government officials ushering transparency and accountability. It is primarily a beginning of a battle that can take a long period of time subsequently and if the information is sensitive, there can also be a threat to lives.

Since the RTI can only make information accessible, it is imperative to functionalise the Lokpal and Lokayuktas so that they can work independently without any executive interference and punish the corrupt Ministers and public servants. The appointment of the former Supreme Court Judge, Justice P.C.Ghose as the first Lokpal of India is a welcome step in this direction.³

Protection of Whistleblowers

Protection to the whistleblowers becomes absolutely essential in this regard as all these institutions and agencies can perform better if people are given ample protection to unmask corruption that is taking place within their organisations. The rising number of deaths of whistleblowers in the recent years has raised serious concerns regarding their protection. India should immediately operationalise the Whistle Blowers Protection Act, 2011 to provide adequate protection to the RTI applicants and whistleblowers. Also attempts of the government to weaken the law by making amendments to the Act should be withdrawn.

Prevention of Misuse of the Act

To meet the very objective of the Act, the use of the Act in its true spirit and content should be carried out. To prevent its misuse, frivolous and vexatious applications should not be entertained. People who have no personal interest in the information should not be allowed to access information unless there is larger public interest.

³ “Justice P.C Ghose appointed first Lokpal”, The Hindu, March 19,2019

Enhanced Accountability from the Institutions and Agencies

As discussed earlier, the approach of the institutions and agencies carrying out public functions is a huge setback in the successful implementation of the Act. People have very poor knowledge about the applicability of the Act on these institutions and agencies. Therefore, more clarity is required in interpreting the provisions relating to the institutions enumerated below:

Judiciary

There is still enough cloud with regards to the disclosure policy of the higher judiciary in India. The disclosure of assets by only a small number of judges is an indication that there lies ambiguity in the interpretation of the Act. The opacity relating to the appointment of judges is also a matter of concern. In spite of coming under the definition of public authority, the judges have been denying disclosure of information that concerns them. Therefore, giving information to the people and assuring them justice would reinstil the faith in the judiciary and bring in more transparency in governance.

Media

Media is considered as the fourth pillar of democracy and making the media accountable becomes imperative for a democracy to thrive. The Official Secrets Act, 1923 which is not formally repealed is used arbitrarily by the government against the journalists and reporters very often violating the freedom of press enshrined under the Constitution of India.⁴ Although the print media is accountable to the Press Council of India, the electronic media is self regulated by the members from the same fraternity. With the advent of social media and e-news, false and fabricated news are also dished out to the people very often. Therefore, there is an urgent need to make suitable amendments bringing the media under the ambit of the definition ‘public authority’ irrespective of their status as a governmental or non-governmental entity. This will ensure accountability and responsiveness and freedom of press in its true spirit.

⁴ The Constitution of India, 1950 Art. 19(1)(a)

NGOs

The NGOs have played a significant role in reaching out to the people and carrying out the various activities on behalf of the government. These NGOs that are substantially funded by the government are accountable to public. It is worrying that despite being public authorities; they fall short of maintaining and updating their records and often refuse disclosure of information. The empirical study has revealed that very few people have the knowledge that they can make these NGOs accountable. The international NGOs functioning in India are funded by foreign agencies and registered under Foreign Contribution Regulation Act (FCRA) have been kept outside the purview of the Act. Taking into consideration their growing significance in India and their reluctance to share information, all the NGOs irrespective of their status should be brought under the purview of the Act. Moreover, regular monitoring and auditing should be conducted to ensure greater transparency in the administration of these NGOs.

Political Parties

Since political parties play a pivotal role in the governance of the nation, there should be greater awareness among people with regard to the candidates they choose and who represent them. Right to Information Act gives the citizens this opportunity. The study reveals that not many people are aware that the political parties fall within the purview of the Act. Therefore disclosure relating to their funding should not only be made to the Election Commission but it should be made accessible to the public. The controversy relating to the refusal of disclosure of the details of the Electoral Bonds reflect the increasing aloofness of the government towards disclosure and raises question about the authority of the Information Commissions. Therefore, by explicitly bringing the political parties under the RTI Act, by making suitable amendments is necessary for removal of doubts and to bring in greater transparency.

Intelligence and Security Organisations

The Intelligence and Security Organisations often get away from disclosing their information under the garb of secrecy. The RTI Act provides exemption to these organisations and also other organisations, not mentioned in the Second Schedule if it concerns the security of the state and in public interest. The state governments also

maintain separate schedules granting immunity from disclosure to the intelligence and Security Organisations functioning in the respective states. The unbridled power exercised by the government in making alterations in the schedule encourages arbitrariness. Although information relating to human rights violations and corruption are excluded from such immunities, they are seldom reported. Therefore, more clarity on the information that can be disclosed by these organisations is required. Whistleblowers and RTI applicants who fearlessly come forward and report such wrongdoings in these organisations should be protected.

Banks

Over the last few years, the banks have considerably lost their credibility post the demonetisation drive, its refusal to disclose the names of the loan defaulters, its wilful disregard towards the increasing number of NPA (Non- performance assets). Although the Act only exempts private banks from disclosure, the public sector banks have been equally reluctant in sharing information with the public. The ambiguities in the RBI guidelines affecting the citizens especially the lower and the middle income group and the frequent refusals to the RTI applications have further worsened the situation. Therefore, adhering to the judgement given in *Jayanti Lal Mistry's* case, the exemptions laid down under Sec 8(1) should be narrowly interpreted to ensure openness.

Private Sector

The exclusion of the private sector from the ambit of the Act has been a matter of great disappointment since the inception of the Act. Although the Act explicitly allows access to information from the private sector in public interest, yet, there are limited options available to the citizens to approach the private sector for information concerning them. Although these private companies are registered under the Companies Act, 2013 (Earlier the Companies Act, 1956) and are regulated by the SEBI, they have often been out of reach of a common man when his rights are infringed. Therefore, taking a cue from South Africa, the private sector should be expressly brought under the ambit of the Act by making suitable amendments.

Encouraging Social Audits

Public vigilance and participation can be ensured through social audits. It empowers the citizens to make the public authorities answerable for their misgovernance. The Right to Information paves the way for the citizens to carry out such measures. Therefore, frequent social audits should be done to assess the performance of the government which should be made available to the citizens during elections to judge the credibility of the government. Also, all other sectors can be streamlined if the provisions of the RTI Act is complied with in letter and spirit.

Promotion of Citizen – Centric Approach to Improve Delivery of Public Services

In a democratic state, the real power rests with the people. The present research work also places the citizens at the fulcrum of the democratic process. They have a larger role to play in the promotion of improved delivery of services. They can be engaged for spreading awareness about the Act and making the procedure more citizen - friendly and easily approachable.

Therefore, the Right to Information if used in the right direction by the citizens can make a huge difference in various fields including education, employment, environment protection ensuring openness and speedy administration of justice. Further, making government functionaries accountable for proper implementation of the provisions of the Act, giving them necessary support by way of better infrastructure and resources for the implementation of the Act can reduce corruption and foster good governance.