



Right to Information

FOR INCLUSION & EMPOWERMENT



RTI
FELLOWS'
REPORTS



Shobha S V
Shibani Ghosh
Sowmya Sivakumar
Nishikanta Mohapatra

Department of Personnel and Training
Ministry of Personnel, Public Grievances & Pensions
Government of India

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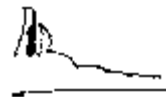
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FOREWORD

The Right to Information Act, 2005 is a landmark legislation that empowers the Indian citizens to seek information from the government. The Department of Personnel and Training administers a- Plan Scheme titled “Improving transparency and accountability in government through effective implementation of the RTI” with the objective to create awareness on RTI, simplifying the process of filing RTI applications and appeals, to improve the quality and speed of disposal of RTI requests and to ensure compliance with the provisions of the Act by making the Information Commissions effective.

Under the Plan Scheme, fellowships were offered to persons from the field of media, civil society professionals, RTI trainers, etc. to conduct field based research on themes relating to RTI. The research output will enhance the Government’s understanding of the status of implementation of the Act, including its successes, constraints in its implementation and how those could be overcome and what more needs to be done to help achieve the objectives of the Act.

Four persons — Ms. Shibani Ghosh, Ms. Sowmya Sivakumar, Ms. Sobha Vishwanathan and Shri Nishikanta Mohapatra were selected to conduct the research on RTI. Their research output is expected to be useful to all the stakeholders in understanding the level of awareness of the people on RTI in the rural areas, the achievements of the people in the use of RTI and the role of Information Commissions in implementation of the RTI Act.



(P.K.Misra)
Secretary

Department of Personnel and Training
Ministry of Personnel, Public Grievances and Pensions

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The Central Information Commission

A 'Nuts and Bolts' Analysis

Shibani Ghosh

INTRODUCTION

12 October 2005 was Vijaya Dashmi or Dussehra. It was a public holiday. And like every other year, Indians across the globe celebrated the (mythological) triumph of good over evil with much fervor. But a section of the Indian populace rejoiced for a different victory. Unknown to most others, that date was significant for another reason; it marked the beginning of an era of empowerment of a special kind. It was the day on which the Right to Information Act 2005 came into force in India. For a citizenry accustomed to the opaque veil of secrecy which shrouded most government institutions and actions, the promise of the 'sunlight'¹ of transparency meant a return of power to the people.

The struggle to institutionalise the right to information has been long and hard-fought. Demands for transparency and the need for accountability in public action are said to have arisen soon after Independence.² In 1975, the Supreme Court of India³ recognised the right to information to be a fundamental right of every citizen of India under Article 19 of the Constitution of India.⁴ This was followed by a series of progressive decisions by the Supreme Court elaborating this right. Yet, realistically, citizens could not really enjoy this right. An archaic colonial law known as the Official Secrets Act 1923, reinforced by a bureaucratic mindset which had been conditioned over decades that it was accountable to no one, ensured that the right to information remained an illusory concept for the people of India.

It was as a result of years of campaigning at the national and regional level that the right to information gradually started taking a real form – first through legislation passed by certain states and then by the Centre through the Right to Information Act 2005 (RTI Act).⁵

¹Dinesh Trivedi v. Union of India (1997) 4 SCC 306.

²Shekhar Singh, 'India: Grassroots Initiatives' in *The Right to Know: Transparency for an Open World* (Ann Florini ed., Columbia University Press, New York, 2007).

³State of Uttar Pradesh v. Raj Narain AIR 1975 SC 865.

⁴The relevant portion of Article 19 is 19. Protection of certain rights regarding freedom of speech, etc. – (1) All citizens shall have the right to freedom of speech and expression;

⁵ Shekhar Singh, 'The Genesis and Evolution of the Right to Information Regime in India', in *Transparent Governance in South Asia* (Indian Institute of Public Administration, New Delhi, 2011).

Emphasising on the need for an informed citizenry and transparency of information for the functioning of a democracy, to control corruption in the Government and to make it more accountable, the RTI Act opens public institutions and the governmental apparatus to unprecedented levels of scrutiny. To ensure that the ideals of transparency and government accountability do not remain mere rhetoric, the Act sets up a clear structure to facilitate access to information – starting from the Public Information Officers (PIOs) in every public authority to the first appellate authority (FAA) and Information Commissions as the second appellate forum.

There are many reasons why the RTI Act has been hailed as a revolutionary legislation – for the first time, citizens can demand disclosure of governmental records and documents in a time-bound manner;⁶ the onus lies on the governmental department to explain refusal to disclose information;⁷ public authorities are mandatorily required by law to *suo moto* place information about themselves in the public domain;⁸ government officials are personally liable for not discharging their duties under the Act.⁹

Although the Act primarily facilitates the disclosure of records and documents, its benefits have been far-reaching. On numerous occasions, simple applications under the Act have exposed corrupt government officials and uncovered huge scams. Government departments have been forced to acknowledge unreasonable delays in delivering under welfare schemes. Many citizens have been able to claim benefits and services to which they are entitled, after years of delay. At the same time, the RTI Act is incentivizing government departments to function more responsibly, as their actions can now be publicly examined.

The enactment of the RTI Act in 2005 has often been termed as the culmination of these campaigns, but the struggles have hardly ended. For every success story that the RTI Act throws up, there are many that have left citizens disillusioned and dissatisfied with this path-breaking legislation. From non-responsive public information officers to evasive responses to harassment – experiences of information seekers across the country are telling a story about the RTI Act which is not as bright.

⁶Section 7(1) read with Section 20, RTI Act.

⁷Section 19(5), RTI Act.

⁸Section 4, RTI Act.

⁹Section 20, RTI Act.

As attempts to reduce the ambit of the law surface at regular intervals, and the implementation of the Act continues to face road blocks at several levels – the fight to protect the right from slipping back into its illusory form is as vital as ever.

~ ~ ~

ABOUT THIS STUDY

The proper implementation of the RTI Act is dependent on several factors – training and generation of awareness about the Act and its ambit in government officials and amongst citizens; change in the mindset of the ‘information-holders’; increased *suo moto* disclosure of information; resources to respond to information requests in a timely fashion; strict action for violation of the provisions of the Act; protection for ‘whistleblowers’; efficiency and effectiveness of the appellate mechanisms provided under the Act.

While not discounting the importance of the other factors, this Report examines mainly the last factor relating to appellate mechanisms. The RTI Act provides two levels of appellate mechanisms – the first appellate forum being an officer senior in rank to the Public Information Officer in the same department and the second being the Central/State Information Commission. The appeal procedure forms a vital part of the Act and was one of the rallying points for the civil society during the drafting of the law. Without an independent, speedy and effective redressal mechanism under the Act, citizens would be left at the whims of Information Officers who may act irresponsibly. With the existing judicial system overburdened and cases taking years to reach any decision, the Act’s appeal procedure ensures that citizens are not forced to approach the Courts at every instance to enjoy their fundamental right to information.

This Report focuses on the Central Information Commission (CIC), not only as an appellate mechanism, but as a body which plays a critical role in the implementation of the Act in many ways. In the words of the President of India, it plays a critical role as the ‘regulator, balancer and educator’.¹⁰ It is the final appellate body under the Act for RTI applications relating to public authorities under the Central government. It has the power to impose penalties on

¹⁰Speech of the Hon’ble President of India, Smt. Pratibha Devisingh Patil, at the Inauguration of the 4th Annual Convention of the Central Information Commission on 12 October, 2009 at New Delhi, available at <http://www.cic.gov.in/convention-2009/PresidentSpeech.pdf> (last visited on 25 July 2011).

erring PIOs; grant compensation to aggrieved RTI Applicants and decide whether an organisation falls within the ambit of the Act. For a relatively new legislation, the CIC's interpretation and application of the law is crucial to building a coherent body of right to information jurisprudence in the country.

Aim and Objectives of the Study

The aim of this Study is to make policy recommendations regarding how the functioning of the CIC can be improved in ways that will contribute to a more effective implementation of the RTI Act. Its objectives are-

To understand the powers and functions of the CIC under the RTI Act and relevant Rules

To examine the day-to-day functioning of the offices of the Central Information Commissioners, the Secretariat of the CIC as well as its Receipt and Dispatch Section

To identify work-practices which are conducive to the efficient functioning of the CIC, as well as those which are creating bottle-necks

To examine the financial resources, human resources and infrastructure available to the CIC for its functioning

Significance of the Study

Given its powers and functions and as 'the most visible aspect of the RTI-regime'¹¹, the CIC's working has an obvious impact on the implementation of the RTI Act in the country. This impact may be direct (e.g. increased pendency of Appeals and Complaints in the Commission's docket delays the disclosure of information in many cases), indirect (e.g. stricter implementation of penalty provisions may serve as a deterrent) or diffused (e.g. the CIC as a role model for SICs). Therefore, a study of the functioning of the CIC, its institutional strengths and weaknesses, and the underlying reasons for the same, would reveal ways in which it could improve

¹¹Welcome Address by Mr. Wajahat Habibullah, Chief Central Information Commissioner, at the Inauguration of the 5th Annual Convention of the Central Information Commission on 13 September, 2010 at New Delhi, available at <http://www.cic.gov.in/convention-2010/Speeches/WelcomeAddress.pdf> (last visited on 25 July 2011).

its functioning, thereby making the implementation of the RTI Act that much more effective.

This study is also significant as there has been no previous critical analysis of the CIC's internal working. Several reports, books and articles have been published on various aspects of the RTI Act 2005¹² — the history of the right to information movement in India;¹³ the coming into force of the RTI Act;¹⁴ the provisions of the Act and significant case law,¹⁵ implementation of the Act and best practices, RTI Applicants and their experience with the law. With regard to Information Commissions and issues relating to their functioning, the most significant reports/publications have been:

'Safeguarding the Right to Information, Report of the People's RTI Assessment 2008' by the RTI Assessment & Analysis Group (RaaG) and National Campaign for People's Right to Information (NCPRI) (2008)¹⁶

'Understanding the "Key Issues and Constraints" in implementing the RTI Act' by Pricewaterhouse Coopers (PWC) who were engaged by the Department of Personnel and Training (DoPT) (2009)¹⁷

'State of Information Commissioners in India – A Performance Evaluation' by Public Cause Research Foundation (2009)¹⁸

¹² A comprehensive Literature Review and Bibliography is available at <http://rtiworkshop.pbworks.com/f/2010-04-IN-Literature-Review-and-Bibliography-Prashant-Sharma.pdf> (last visited on 25 July 2011).

¹³ Shekhar Singh, *supra* n. 5; Aruna Roy and Nikhil Dey, 'Fighting for the Right to Know in India', available at <http://www.freedominfo.org/wp-content/uploads/documents/rtiessay.pdf> (last visited on 25 July 2011); Andrew Puddephatt, 'Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom' (IDRB/The World Bank, Washington DC, 2009).

¹⁴ The website of the Commonwealth Human Rights Initiative provides comprehensive information on the right to information campaign and the various recommendations/proposals at http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84 (last visited on 25 July 2011).

¹⁵ Several case books on the RTI Act have been published till date. One of the most recent books is Sudhir Naib, *THE RIGHT TO INFORMATION ACT 2005: A HANDBOOK* (Oxford University Press, India, 2011).

¹⁶ Revised Executive Summary available at http://www.rti.gateway.org.in/Documents/References/English/Reports/8.%20RaaG%20study_exe_summary%20-%20revised.pdf (last visited on 25 July 2011).

¹⁷ Report available at <http://rti.gov.in/rticorner/studybypwc/index-study.htm> (last visited on 25 July 2011).

¹⁸ Report available at http://www.rtiawards.org/images/final_report.pdf (last visited on 25 July 2011).

'Best Practices in the Implementation of the Right to Information Act, 2005' by Centre for Good Governance (2009)¹⁹

Report of Committee constituted by the Central Information Commission to undertake an in-depth study and analysis of the problems and issues raised during the Annual Convention 2008, and to explore ways and measures for strengthening the information regime (2009)²⁰

Press Note - *Information Commissioners cause a loss of Rs 86 crores* by Public Cause Research Foundation (2010)²¹

'A Great and Revolutionary Law? The First Four Years of India's Right to Information Act' by Alisdair Roberts published in *Public Administration Review*, 70: 925–933 (2010)²²

Report on the Work Measurement Study of Central Information Commission (Staff Inspection Unit, Ministry of Finance, Government of India, 2010)²³

All of the above reports/publications provide valuable insights and give good data with respect to certain aspects of the working of Information Commissions – number of cases disposed, pendency, number of cases in which penalties have been imposed/compensation has been awarded. They also discuss some of the best practices that have been adopted by different Commissions, and identify the problems faced by the Commissions in discharging their responsibilities. However, none of these studies analyse the day-to-day working of the Central Information Commission or give recommendations for improving its institutional capacity and output.

Pratap Bhanu Mehta, in his study on the Indian Judiciary, highlights certain reforms that were undertaken by the Supreme Court to reduce its docket load and concludes that 'nuts and bolts matter'. He notes - '[i]n many Indian institutions, a cumulative set of small procedural anomalies can have far reaching impact on the performance of institutions. But there is often little incentive to attend to small but

¹⁹Report available at <http://www.cgg.gov.in/workingpapers4/bestpracticesrti2005.pdf> (available at 25 July 2011).

²⁰Report available at <http://www.cic.gov.in/> (available at 25 July 2011).

²¹Available on file with Researcher.

²²Article available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6210.2010.02224.x/pdf> (available at 25 July 2011).

²³Available on file with Researcher.

consequential procedural matters'.²⁴ Putting it simply, while existing literature paints the larger picture for us with regard to problems faced by Commissions generally, this study looks at the 'nuts and bolts' of the Central Information Commission.

Scope of the Study

The study examines institutional aspects of the CIC, such as its day-to-day functioning, case disposal mechanisms and their efficiency, institutional capacity and resource utilization, and the contribution made by the CIC towards the creation of a strong right to information jurisprudence.

As stated above, the objective of this Study has been to prepare policy recommendations aimed towards enhancing the CIC's efficiency and effectiveness. An analysis of a limited set of decisions of the CIC has been undertaken to support certain recommendations made at the end of the Study. A more comprehensive analysis of the CIC's jurisprudence (its decisions and the development of case law), although undoubtedly constituting an important and interesting research agenda, is not included within the scope of the present study. Such an extensive agenda would require a longer time period and exclusive research commitment.

Research Methodology

As this Study focuses on the working of the CIC, interviews with Information Commissioners and the staff of the CIC form a crucial part of the research agenda. Interviews were also conducted with officials of the DoPT and members of civil society groups.²⁵ The methodology followed by the researcher was that of semi-structured interviews. To that end, a rough interview schedule was prepared before each interview with a list of issues and possible questions (which depended on the role of the interviewee in the Commission or the nature of his or her involvement with the Commission's working). For the offices of the Commissioners, the same interview schedule was used to ensure comparability.²⁶ A short survey was also conducted amongst a randomly selected sample of fifteen staff

²⁴Pratap Bhanu Mehta, 'India's Judiciary: The Promise of Uncertainty' in *PUBLIC INSTITUTIONS IN INDIA: PERFORMANCE AND DESIGN* (Devesh Kapur and Pratap Bhanu Mehta, eds., Oxford University Press, New Delhi, 2005) 188.

²⁵List of Interviewees is provided in Appendix I.

²⁶The Interview Schedule is provided in Appendix II.

members to obtain their views on the working of the CIC.²⁷

As most of the persons are working with the government, a conscious decision was made to not formally record the interviews with an audio recorder, as it is well-known that interviewees give guarded responses in such a situation. The researcher has, therefore, taken hand-written notes during the interviews. On a number of occasions during the course of the interviews, the researcher was given information on the condition that the same would not be attributed to the interviewee. Furthermore, some interviewees have requested that, before the researcher attributes any information to them, she should get such attribution vetted by them.

Structure of Report

The Report has been divided into three Parts. Part I traces the 'history' of the CIC through an analysis of the mechanisms/ bodies proposed in different versions of the right to information law (before it was finally passed as the RTI Act 2005), to perform the functions which are currently being performed by the CIC. It then discusses the functions and powers of the CIC and its current structure and functioning.

Part II of the Report discusses the major issues relating to the working of the Commission, the problems faced by it and proposes certain solutions. The issues have been broadly grouped into two categories – issues relating to the Commission's quasi-judicial functions and issues relating to the administration of the Commission.

Part III of the Report summarises some of the significant recommendations made in the Report and suggests certain guiding principles which need to be kept in mind while addressing issues relating to the functioning of the CIC.

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²⁷ *The Short Survey Form is provided in Appendix III.*

I

ABOUT THE CENTRAL INFORMATION COMMISSION

TRACING THE HISTORY OF THE RIGHT TO INFORMATION ACT 2005

The RTI Act 2005 was the culmination of more than a decade of efforts to enact a national law on the right to information. One of the first formulations of a right to information legislation was proposed by the Consumer Education and Research Council (CERC), Ahmedabad in 1993.²⁸ Then, in 1996, the newly-formed National Campaign for People's Right to Information (NCPRI) along with the Press Council of India (PCI) drafted the Right to Information Bill 1996 under the guidance of Justice PB Sawant, a retired judge of the Supreme Court of India.²⁹ This Bill was later revised in 1997.³⁰ The Government constituted a committee headed by Mr. HD Shourie which proposed a law on freedom of information in 1997. Subsequently, in 2000, the law proposed by the HD Shourie Committee was reworked as the Freedom of Information Bill 2000.³¹ The Bill was referred to the Department-related Parliamentary Standing Committee on Home Affairs which gave its recommendations in July 2001.³² The Freedom of Information Act 2002 was passed by Parliament in December 2002 and received Presidential assent in January 2003.³³ However, as the Act was never notified, it did not come into force.

When the first UPA government came to power in 2004, the Common Minimum Program released by it promised that 'the Right

²⁸The CERC version of the law http://www.humanrightsinitiative.org/programs/ai/rti/india/legislation/CERC_RTI_Bill.pdf (last visited on 26 July 2011).

²⁹The Right to Information Bill 1996 is available at http://www.humanrightsinitiative.org/programs/ai/rti/india/legislation/rti_bill_1996_pci.pdf (last visited on 26 July 2011).

³⁰The Right to Information Bill 1997 is available at http://www.humanrightsinitiative.org/programs/ai/rti/india/states/ap/nird_hyderabad_rti_bill_97.pdf (last visited on 26 July 2011).

³¹Freedom of Information Bill 2000 is available at http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/fiji/foi_bill_2000_fiji.pdf (last visited on 26 July 2011).

³²Report of the Parliamentary Standing Committee available at http://164.100.24.167/book2/reports/home_aff/78threport.htm (last visited on 26 July 2011).

³³Freedom of Information Act 2002 is available at http://persmin.nic.in/img/freedomofinf_140704.htm (last visited on 26 July 2011).

to Information Act will be made more progressive, participatory and meaningful'.³⁴ The National Advisory Council (NAC) was formed to oversee the implementation of the Common Minimum Program. The NCPRI and the Commonwealth Human Rights Initiative (CHRI) made submissions to the NAC indicating the flaws in the Freedom of Information Act 2002 and making several substantive recommendations.³⁵ After its third meeting in August 2004, the NAC submitted its recommendations to the Government. Taking into consideration the NAC's recommendations, the Government tabled the Right to Information Bill, 2004 in the winter session of Parliament in December 2004.³⁶ It was referred to the Department-related Standing Committee on Personnel, Public Grievances, Law and Justice. The Standing Committee held several meetings and heard witness accounts from various stakeholders, including civil society members. The report of the Standing Committee was tabled in Parliament in March 2005.³⁷

On 10 May 2005, the Right to Information Bill 2004 was tabled in the Lok Sabha. It received approval from the Lok Sabha on 11 May 2005 and from the Rajya Sabha on 12 May 2005. On 15 June 2005, President APJ Abdul Kalam gave his assent to the Bill. The Right to Information Act 2005, as provided in its text, came into force 120 days after being passed, on 12 October 2005.³⁸

Proposed Mechanisms

The CIC has three broad roles under the RTI Act 2005 – that of adjudicator, monitor and reporter. Most versions of the draft legislation on right to information, starting from the 1993 CERC proposal, had an appellate mechanism for persons who had not been provided any information or were provided unsatisfactory information. However, these appellate mechanisms varied in their

³⁴Common Minimum Program available at <http://pmindia.nic.in/cmp.pdf> (last visited on 26 July 2011).

³⁵Recommendations available at http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84 (last visited on 26 July 2011).

³⁶Right to Information Bill 2004 is available at http://www.humanrightsinitiative.org/programs/ai/rti/india/national/rti_bill_2004_tabled_version.pdf (last visited on 26 July 2011).

³⁷Report of Parliamentary Standing Committee available at <http://164.100.24.167/book2/reports/personnel/3rdreport.htm> (last visited on 26 July 2011).

³⁸Right to Information Act 2005 available at <http://righttoinformation.gov.in/rti-act.pdf> (last visited on 26 July 2011).

nature and form. The later versions of the law/recommendations noted the need for monitoring and reporting on the implementation of the law in the country.

The various versions/ recommendations have been detailed in Table 1, along with what they proposed with regard to the appellate mechanisms and the reporting and monitoring functions.

An analysis of the various proposals and recommendations reveals some interesting points:

- An appeal mechanism within the Act was considered necessary to provide appropriate redressal against refusal to provide information.
- There was a deliberate move away from existing judicial forums (Principal Civil Judge) and quasi-judicial bodies (Consumer Forums/Commissions) as these were already overburdened. Cases under the right to information law would take very long to conclude if they went through the existing judicial system.
- It was considered important that such institution be an independent institution and not part of the existing governmental structure, to ensure that the right to information is vigorously enforced.
- At the same time, it was considered pragmatic to have a first appellate mechanism within the department, as officials within the department were likely to be most familiar with the information in question. It was expected that several grievances against the actions of the Information Officers would be solved at the first appellate level itself, and people would not have to approach the Commission.
- In all proposals/recommendations, the appellate bodies were expected to deliver their decision in a case within a stipulated time frame. This would ensure that cases would not drag on for a long time, like in regular courts, and people could access information in a timely manner.
- To ensure that erring officials under the Act are brought to book, power to impose penalties was considered necessary.
- An effective review and monitoring mechanism was considered important to ensure proper implementation of the Act.

Table 1: Provisions for Appeal and Review of implementation of right to information law in earlier proposals and recommendations

	Proposal/ Recommendation	Provisions
1.	CERC Proposal 1993	A three-tier independent appellate mechanism – the first forum of appeal would be the Information Commissioner at the District level, then an Information Commissioner at the State level and then the Central level.
2.	NCPRI/PCI RTI Bill 1996	<p>An appeal would lie before the Principal Civil Judge of ordinary original civil jurisdiction of the area in which the public authority from which information has been sought is located.</p> <p>The Principal Civil Judge would have to decide the Appeal within thirty days of it being filed with a written order giving reasons.</p> <p>[Clause 7]</p>
3.	Revised NCPRI/ PCI RTI Bill 1997	<p>Same as above. However, it was added that the decision of the Principal Civil Judge would be final.</p> <p>[Clause 9]</p> <p>The Bill proposed the setting up of National and State Councils for Freedom of Information which would be chaired by the Minister in charge of the Department of Administrative Reforms. These Councils would be responsible for, inter alia, reviewing the operation of the Act, reviewing the administrative arrangements and procedures to secure for the citizen the fullest possible access to information and to advise the Government on issues relating to the right to information. There would be a statutory Parliamentary Committee on the Right to Information to review the implementation of the Act. The State Council would present an annual report to the State Legislature.</p> <p>[Clauses 16-19]</p>

4.	1997 HD Shourie Committee RTI Bill	<p>An internal review mechanism was provided for. A person who was refused information could make an application for review to the Head of the Department or any such authority who has jurisdiction over the office from which information has been sought.</p> <p>The reviewing authority would have to dispose of the review application within thirty days.</p> <p>[Clause 14]</p> <p>An appeal against the aforementioned reviewing authority could be made within thirty days and it would be treated as a complaint under the Consumer Protection Act 1986. The District Forum, the State Commission or the National Commission would have to dispose of the complaint in thirty days.</p> <p>[Clause 15]</p> <p>The Bill also proposed the setting up of National and State Councils for Freedom of Information as had proposed in the NCPRI/PCI RTI Bill 1997.</p> <p>[Clauses 18-20]</p> <p><i>It did not provide for a Parliamentary Standing Committee or require the State Council to present a report to the State Legislature.</i></p>
5.	Freedom of Information Bill 2000	<p>A person could appeal against the decision of the Public Information Officer to an authority as may be prescribed. A second appeal from the decision of such an authority would lie with the Central government, State government or the competent authority.</p> <p>Both appeals would have to be decided within thirty days of receipt.</p> <p>[Clause 12]</p> <p><i>No provision on monitoring and reviewing the implementation of the Act.</i></p>

6.	78 th Report of the Department-related Parliamentary Standing Committee on Home Affairs on Freedom of Information Bill 2000, 2001	<p>The report records the observations/recommendations made by several witnesses with regard to the appeal mechanisms proposed in the Freedom of Information Bill 2000. Some of the observations/recommendations made were-</p> <ul style="list-style-type: none"> • The Bill did not provide for an independent forum for appeal and the appeal mechanism within the government could not ensure fairness in the process. It was recommended that an independent tribunal with the powers of a civil court should be set up. • General principles should be laid down for the appointment of the appellate authority within the department. The second appeal should be to an independent statutory authority such as a Lok Pal, the Lok Ayukta or to a Board of Revenue or Divisional • The appeal mechanism should be a non-governmental institution like a commissioner or ombudsman. <p>The report also records the Government's response to the objections raised against the proposed appellate mechanism. The Government took the position that departmental procedures would be economical and cost effective. The Consumer Forums were already witnessing massive arrears and therefore the HD Shourie Committee recommendation could not be accepted. Persons dissatisfied with the departmental appellate mechanisms could approach the High Courts in writ jurisdiction. Finally the Standing Committee retained the clauses with regard to the appeal procedure in the Bill without any changes.</p>
7.	Freedom of Information Act 2002	<p>The provisions of the Freedom of Information Bill 2000 were retained.</p> <p>[Section 12]</p>

8.	Recommendations made by NCPRI to the NAC, July 2004	<p>The NCPRI recommended the appointment of a Chief Information Commissioner and Information Commissioners in every state by the Central Government in consultation with the Chief Justice of the relevant High Court.</p> <p>An appeal from the decision of the Public Information Officer to the Information Commissioner who would be an independent authority and would function autonomously without being subjected to directions from any authority.</p> <p>The Information Commission would have to dispose of every appeal within thirty days of receipt and the decision would be binding. The Information Commissioners were given various powers including the power to impose a penalty on erring Public Information Officers.</p> <p>[Clause 12]</p> <p>The Information Commissioners were also given the responsibility to monitor the implementation of the Act and to present a report in the Parliament and the State Legislatures.</p> <p>[Clause 16A]</p>
9.	Recommendations made by CHRI to the NAC, July 2004	<p>As there was no justification for two internal appeal procedures, it was recommended that the second appeal should be made to an independent Information Commissioner. A Commission with multiple Commissioners and/or multiple state-based Commissions were recommended as it was anticipated that the workload of such a body would be quite large. The Commissioners should enjoy 'budgetary, operational and decision-making autonomy and should be completely independent of the interference or direction of any other person or authority, other than the Courts'.</p> <p>The decisions would have to be made within a time-limit (recommended thirty days) and would be binding determinations with the Commissioners having the powers to ensure compliance and impose penalties.</p> <p>[Paras 50-59]</p> <p>The Information Commissioners would have the responsibility to monitor the implementation of the Act and to present a report to the Parliament or the State Legislatures.</p> <p>[Para 72]</p>

10.	Recommendations of the NAC to the Government, 2004	<p>The first forum for appeal would be an appellate authority within the department who would be a senior ranking officer than the Public Information Officer. A second appeal would lie before Chief Information Commissioners or the State Information Commissioner. Information Commissioners would be selected by a Committee consisting of the Prime Minister, Leader of the Opposition and the Chief Justice of India or of the relevant High Court.</p> <p>Both appeals would have to be disposed of within 30 to 45 days of receipt and the decision would be binding.</p> <p>The Commissioners would function 'autonomously without being subjected to directions by any other authority' and would be under the administrative control of the Government of India, Ministry of Personnel, Administrative Reforms and Public Grievances. The Information Commissioners would have various powers, including inter alia, power to award compensation, impose penalty, and carry out investigation of any complaint under the Act.</p> <p>[Clause 12]</p> <p>The Information Commissioners would present a report on the implementation of the Act in the Parliament and the State Legislatures.</p> <p>[Clause 16]</p>
11.	Right to Information Bill 2004	<p>Part of the recommendations made by the NAC with regard to the appellate mechanisms was accepted. However, the recommendation with regard to State Information Commissioners was deleted. The limit was set on the number of Deputy Information Commissioners who can be appointed (ten). The Commissioners were not given powers to impose penalties but authorize any official of the Central Government to file a complaint against the erring Public Information Officer before a Judicial Magistrate First Class.</p> <p>[Clauses 12 and 17]</p> <p>The Information Commissioners will prepare an annual report on the implementation of the Act and forward a copy to the Central Government which will lay it before the Parliament.</p> <p>[Clause 22]</p>

12.	Report of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice – on the Right to Information Bill 2004, March 2005	<p>The Committee made several recommendations based on the statements made by witnesses before it –</p> <ul style="list-style-type: none"> • The qualifications to become an Information Commissioner should be broadened. • The independence and autonomy of the Information Commissioners should not be curbed in any way • The Information Commissioners should have the status of the Election Commissioners to achieve 'utmost independence and autonomy'. • The Information Commission should have direct powers to impose penalties or to initiate some kind of disciplinary action against a PIO. • It was recommended that State Information Commissions be set up.
13.	Right to Information Act 2005	<p>The two-tier appellate process as proposed in the Bill 2004 was adopted. Most of the recommendations made by the Standing Committee were incorporated in the Act. State Information Commissions were set up.</p> <p>Information Commissions have been given the power to impose penalty and recommend disciplinary action.</p> <p>[Section 20]</p> <p>No time limit was set within which Commissions has to decide a case. The First Appellate Authority has to decide the case within 30 days which can be extended to 45 days with reasons.</p> <p>[Section 19(6)]</p> <p>The Information Commissions have to review and monitor the implementation of the Act.</p> <p>A report has to be submitted by the Information Commissions to the Parliament/State Legislature annually.</p> <p>[Section 25]</p> <p><i>For a detailed discussion of the powers and functions of the Central Information Commission please refer Part II of the report.</i></p>

THE RIGHT TO INFORMATION ACT 2005

A brief description of the RTI Act is necessary at this stage to set the CIC and its working in a proper context. Under the Act, each 'public authority'³⁹ has to appoint Public Information Officers (PIOs) and First Appellate Authority (FAA), who is an officer senior in rank to the PIO. A request for 'information'⁴⁰ – popularly known as a RTI Application or just 'RTI' – may be filed with the PIO of a public authority. The PIO has to send a reply to the RTI Applicant within thirty days. Information which is exempt under Section 8(1) of the Act need not be provided by the PIO. The Applicant has to pay fees along with the Application as well as for photocopying of documents as per the relevant rules.⁴¹

If the information is not received within 30 days or the information received is deficient in any way, the RTI Applicant may file an Appeal with the First Appellate Authority (FAA) within 30 days of receiving the reply or within 60 days of filing the RTI Application.⁴² The FAA has to issue an order in the matter within 30 days or upto 45 days with reasons for the delay.⁴³

If the RTI Applicant is aggrieved by the order of the FAA or has not received an order within the stipulated time frame, a second appeal may be filed with the Central or State Information Commission. This Appeal has to be filed within 90 days from the date of the FAA's order or from the date on which the order should have been issued.⁴⁴

Section 4 of the Act requires public authorities to make certain *suo moto* disclosures. This includes basic information about the authority

³⁹ As defined in Section 2(h) of the RTI Act. The definition includes all central and state government departments; any authority, body or institution which has been set up under the Constitution of India, by a central or state law or by any notification or order made by the central or state government; bodies which are owned, controlled or substantially financed directly or indirectly by government funds; and NGOs which are substantially financed directly or indirectly by government funds

⁴⁰ As defined under Section 2(f) - "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

⁴¹ For RTI applications filed with public authorities for whom the appropriate Government is the Central Government, fees are as per The Right to Information (Regulation of Fee and Cost) Rules 2005.

⁴² Section 19(1), RTI Act.

⁴³ Section 19(6), RTI Act.

⁴⁴ Section 19(3), RTI Act.

such as functions, duties, powers, directory, pay scale of employees, etc. Disclosures also have to be made of the budgetary allocation, recipients of concessions, permits and authorisations, decision making process in the organisation, etc.

THE CENTRAL INFORMATION COMMISSION

The Department of Personnel and Training (under the Ministry of Personnel, Public Grievances and Pensions), being the Nodal agency for the implementation of the RTI Act, issued a Notification on 11.10.2005⁴⁵ constituting the CIC and appointing the first Chief Information Commissioner and four Information Commissioners. The Chief Information Commissioner and three Information Commissioners took oath of office between 26 and 31 October 2005 and the fourth Information Commissioner took oath on 26 December 2005.⁴⁶ Subsequently, over the past six years, seven other Information Commissioners have been appointed. Of the twelve Information Commissioners appointed till date, five have retired and one Commissioner has resigned. At present, the Commission is functioning with the Chief Information Commissioner and five Information Commissioners⁴⁷ –

- Mr. Satyanand Misra (Chief)
- Mrs. Annapurna Dixit
- Mr. M.L. Sharma
- Mr. Shailesh Gandhi
- Mrs. Sushma Singh
- Mrs. Deepak Sandhu

Legal Provisions

- **Strength**

The CIC consists of the Chief Information Commissioner and upto ten Information Commissioners.⁴⁸ The Chief Information Commissioner

⁴⁵Notification F. No. 1/7/2005-IR available at http://persmin.gov.in/WriteReadData/CircularPortal/D2/D02rti/Notification_CIC.pdf (last visited on 27 July 2011).

⁴⁶Information available at <http://www.cic.gov.in/> (last visited on 30 July 2011).

⁴⁷Circulars and information relating to the appointment of Information Commissioners available at <http://www.cic.gov.in/> (last visited on 30 July 2011).

⁴⁸Section 12(2), RTI Act.

and the Information Commissioners have the same powers under the Act. The additional responsibility given to the Chief Information Commissioner is that of 'general superintendence, direction and management of the affairs of the Commission'⁴⁹.

- **Appointing Authority**

The Chief Information Commissioner and the Information Commissioners are appointed by the President of India on the recommendation of a selection committee. This committee consists of the Prime Minister (Chairman), Leader of the Opposition in the Lok Sabha and a Union Cabinet Minister who is nominated by the Prime Minister.⁵⁰

- **Eligibility criteria**

The Chief Information Commissioner and the Information Commissioners are expected to 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'.⁵¹ While holding the posts of Chief Information Commissioner and Information Commissioners, persons cannot be a Member of Parliament or a State Legislature, hold an office of profit, be connected with any political party or carry on a business or profession.⁵²

Interestingly, the Standing Committee had recommended against including MPs and MLAs within the scope of this disqualification-provision. But their recommendation was overruled.

- **Terms of Office**

Commissioners are appointed for a period of five years or till they attain the age of 65 years, whichever is earlier, and they are not eligible for reappointment.⁵³ The RTI Bill 2004 placed a restriction on future engagement of Information Commissioners by the Government. The Standing Committee recommended the removal of the same, and the restriction does not find place in the Act.

⁴⁹Section 12(4), RTI Act.

⁵⁰Section 12(3), RTI Act.

⁵¹Section 12(5), RTI Act.

⁵²Section 12(6), RTI Act.

⁵³Section 13(1), RTI Act.

Presence of the Judiciary in the Selection Committee

According to the RTI Bill 2004, other than the Prime Minister and the Leader of the Opposition, the Chief Justice of India would have been on the selection committee. No change was suggested by the Standing Committee in this provision. Despite this, the Chief Justice of India was replaced by a member of the Union Cabinet.

The Second Administrative Reforms Commission in its report on the Right to Information (2006) recommended that the Chief Justice of India or of the relevant High Court should be a part of the committee for selecting Central and State Information Commissions. The recommendation was based on the fact that the Information Commissions affected all three branches of the government but the judiciary was not represented in the committee. Furthermore, according to the ARC, the presence of a member from the judiciary would 'inspire public confidence and enhance the quality of the selection'.

Nikhil Dey, Co-Convenor, NCPRI, in an interview said that the absence of a judicial member in the selection committee affected the bipartisan method of selection, particularly in the states. With the Chairman and one member of the committee generally being from the same party, the 2:1 majority is easy to obtain and the benefits of consensus are lost.

- **Conditions of Service**

On the recommendation of the Standing Committee, the conditions of service of the Chief Information Commissioner and of the Information Commissioners are the same as that of the Chief Election Commissioner of India and the Election Commissioners respectively.⁵⁴ The Standing Committee's recommendation was made to ensure the 'utmost independence and autonomy'. The RTI Bill 2004 gave an Information Commissioner the status of a Secretary, and the Deputy Commissioner the status of an Additional Secretary.

- **Jurisdiction**

The CIC has jurisdiction over all public authorities which are part of the Central Government or the Union Territory administration and

⁵⁴Section 13(5), RTI Act.

which are established, constituted, owned, controlled or substantially financed, directly or indirectly, by the Central Government. The State Information Commissions have jurisdiction over public authorities which are similarly related to the state governments. There is a common misconception that the CIC and the SICs are in a similar hierarchy as the Supreme Court and the High Courts, and for this reason many cases are sent to the CIC which deal with the public authorities under the state government. The CIC does not have any appellate or supervisory powers over the SICs, as their subject matter jurisdiction is mutually exclusive.

- **Financial resources**

The Central Government provides the necessary finances to the CIC (for payment of salaries and allowances, and for the administration of the CIC).⁵⁵ It is not a grants-in-aid organisation. Therefore, its budget is part of the budget of the DoPT, and it has to submit annual account statements to the DoPT. For any Plan expenditure, the CIC has to seek the approval of the DoPT.

- **Recourse against the CIC's order**

An order of the CIC is final and binding, and no appeal lies against its orders.⁵⁶ Furthermore, the RTI Act bars the jurisdiction of courts from entertaining any suit, application or other proceeding in respect of any order made under the RTI Act (which includes the order of the CIC).⁵⁷ Therefore, the only recourse available to challenge an order of the CIC is to approach the High Courts in writ jurisdiction, under Article 226 of the Constitution. Around 800 writs are pending in High Courts across the country, which challenge orders of the CIC.⁵⁸

Functions of the Central Information Commission

As mentioned earlier, the CIC has three main roles under the RTI Act 2005 – that of adjudicator, monitor and reporter. It is in its first *avatar* that the CIC invests the maximum time and resources. The CIC adjudicates complaints and appeals filed before it under Section 18(1) and 19(3) of the RTI Act 2005.

⁵⁵Section 13(6), RTI Act.

⁵⁶Section 19(7), RTI Act.

⁵⁷Section 23, RTI Act.

⁵⁸Interview with the Joint Secretary & Additional Registrar (Law), Mr. Akash Deep Chakravarti.

A complaint may be filed before the CIC on the following grounds⁵⁹-

- If a person has not been able to submit a RTI Application to a public authority either because no Public Information Officer (PIO) has been appointed, or the PIO has refused to accept the RTI Application or an appeal.
- If access to information has been refused under the Act
- If information has not been given within the time limit prescribed in the Act or no response has been given
- If a person has been asked to pay fees which she considers unreasonable
- If incomplete, misleading or false information has been given
- Any other matter relating to requesting or obtaining access to records under the Act

If the CIC is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry.⁶⁰ There is no time limit as to when a complaint has to be filed with the CIC.

An appeal may be filed with the CIC against an order of the First Appellate Authority.⁶¹ Grounds for appealing before the First Appellate Authority are if no information is received within the time limit prescribed in the Act or if the Applicant is aggrieved by the information provided.⁶² No specific grounds for appeal to the CIC are mentioned in the Act. An appeal to the CIC has to be filed within ninety days from the date of the order of the First Appellate Authority or the date on which the order should have been received.⁶³ The CIC may, if it is satisfied that there was reasonable cause for delay, accept an appeal filed after ninety days.⁶⁴ If the information sought relates to a third party, then the CIC has to give a reasonable opportunity to the third party to be heard.⁶⁵ While there is a time limit within which the First Appellate Authority has to give its decision,⁶⁶ there is no similar time limit for the CIC.

⁵⁹Section 18(1), RTI Act.

⁶⁰Section 18(2), RTI Act.

⁶¹Section 19(3), RTI Act.

⁶²Section 19(1), RTI Act.

⁶³Section 19(3), RTI Act.

⁶⁴Proviso to Section 19(3), RTI Act.

⁶⁵Section 19(4), RTI Act.

⁶⁶Section 19(6), RTI Act.

The other two functions of the CIC are that of monitoring and reporting under Section 25 of the Act. If the CIC is of the opinion that a practice of a public authority in relation to the exercise of its function under the RTI Act is such that it does not conform to the letter and spirit of the Act, the CIC may give recommendations to the public authority to take action which would promote the necessary conformity.⁶⁷

At the end of each year, the CIC has to prepare a report with information relating to the implementation of the RTI Act in the public authorities within its jurisdiction and forward it to the Central Government.⁶⁸ This report is based on information provided by the public authorities to the CIC and includes the number of requests for information made to the public authority, number of instances in which the information was denied and under which provision of the Act, number of appeals, charges collected under the Act, etc.⁶⁹ The CIC may also include –

‘recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information’.⁷⁰

While the aforementioned are the main functions of the CIC under the Act, the CIC being a public authority itself has to respond to requests for information sent to it, in accordance with the provisions of the Act.

Powers of the Central Information Commission

The CIC has been given a wide range of powers under the Act to discharge its functions and to ensure effective implementation of the Act. While inquiring into a complaint, the CIC has been given the powers of civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of matters such as summoning and enforcing the attendance of persons and compelling them to give evidence or produce documents, requiring the discovery and inspection of documents, receiving evidence on affidavit, issuing

⁶⁷Section 25(5), RTI Act.

⁶⁸Section 25(1), RTI Act.

⁶⁹Section 25(3), RTI Act.

⁷⁰Section 25(3)(g), RTI Act.

summons to witness etc.⁷¹ The Act also empowers the CIC to examine any record to which this Act applies, notwithstanding any other law in force, and such a document cannot be withheld from the CIC on any grounds.⁷²

The CIC also has the power to direct a public authority to appoint Public Information Officers, provide access to information, publish certain categories of information, make certain changes in its record management practices and facilitate training of its officials on right to information.⁷³

Section 19(8)(b) gives the CIC the power to award compensation to a persons who has suffered any loss or detriment. This compensation is paid by the public authority. The High Court of Delhi while quashing CIC's order awarding compensation to a RTI Applicant held in *NTPC v. Mohd. Samad Khan*⁷⁴:

"The compensation payable under Section 19 (8)(b) is "for any loss or other detriment suffered", on account of the denial of the information under the RTI Act and not just about any loss or detriment suffered by the applicant."

Perhaps the most unique power enjoyed by the CIC is its power to impose penalties on PIOs under the Section 20 of the Act. If the CIC finds that a PIO or a deemed PIO⁷⁵ has without a reasonable ground done any of the following it can penalise that person⁷⁶-

- Refused to receive a RTI application
- Not furnished information within the time limit stipulated in the Act
- Malafide refusal to the request for information
- Knowingly gave incorrect, incomplete, or misleading information

⁷¹Section 18(3), RTI Act.

⁷²Section 18(4), RTI Act.

⁷³Section 19(8)(a), RTI Act.

⁷⁴W.P. (C) No. 5403/2008 dated 09.03.2010; a similar position was taken by the High Court of Delhi in *Delhi Development Authority v. Subhash Chander*, W.P. (C) No. 5563/2007 dated 06.07.2009.

⁷⁵Section 5(4), RTI Act permits the PIO to seek assistance from any other officer as he or she considers necessary for the proper discharge of duties under the Act. According to Section 5(5) such person would be treated as a PIO for the purposes of Section 20 of the Act and he or she is commonly referred to as 'deemed PIO'.

⁷⁶Section 20(1), RTI Act.

- Destroyed information which had been sought
- Obstructed in any manner in furnishing the information

The penalty amount has been fixed by the Act as two hundred and fifty rupees per day till the application is received or the information is furnished to the Applicant. This penalty amount is subject to a maximum limit of twenty five thousand rupees and is paid by the person responsible individually, and not by the public authority. The concerned PIO or deemed PIO has to be given a reasonable opportunity to be heard before a penalty is imposed on him or her.⁷⁷ The burden of proof has been placed on the PIO to prove that he had acted reasonably and diligently.⁷⁸

Other than monetary penalty, the Act also gives the power to the CIC to recommend disciplinary action against the PIO or deemed PIO under service rules applicable to him or her if it is found that he or she has without reasonable cause and persistently done any of the acts mentioned above.⁷⁹

Seat of the Central Information Commission

As provided in the RTI Act, the headquarters of the CIC are at New Delhi.⁸⁰ The Act makes provision for the CIC to establish offices in any other place in India with the prior approval of the Central Government,⁸¹ but this has not been done as yet.

To address part of the problem of having only one office in Delhi, the CIC has installed audio and video conferencing facilities in each Information Commissioner's office. Parties to a case need to reach the nearest NIC studio (generally situated in the District headquarters) at the scheduled time and the Information Commissioner conducts the hearing through video-conferencing. If one of the parties cannot reach the studio, it is not unusual for the Information Commissioner to contact the party on telephone. This saves the parties the costs and time of travelling to Delhi. There is typically no difference in the quality of discussion during a hearing held in person or through audio/video conferencing.

⁷⁷First proviso to Section 20(1), RTI Act.

⁷⁸Second proviso to Section 20(1), RTI Act.

⁷⁹Section 20(2), RTI Act.

⁸⁰Section 12(7), RTI Act.

⁸¹Section 12(7), RTI Act.

- **The office space**

When the CIC started functioning in October 2005, its office was set up in 3 rooms in the Old Jawaharlal Nehru University (JNU) Campus. In August 2006, the CIC shifted part of its office to rooms allotted to it in August Kranti Bhawan, located at least three kilometres away. As of now the CIC offices in August Kranti Bhawan house the offices of four Information Commissioners and their staff, the Secretariat of the CIC and part of the Dispatch section. In the Old JNU Campus, the CIC has offices for four Information Commissioners and their staff; of which only half are occupied (due to vacancies). The CIC's Receipt section is situated in another part of the Old JNU Campus. The CIC is, therefore, currently operating from three different places.

According to information available on the CIC's website, there are plans for construction of a building for the CIC. Of the 26.60 crore rupees allocated to the Commission in the 11th Five Year Plan (2007-2012), 18.50 crore has been earmarked for the construction of the Head Office of the CIC. An agreement has been entered into with the School of Planning and Architecture (SPA), New Delhi to design the building. However, till now, a suitable piece of land for the construction of the building has not been located.⁸²

Structure of the Central Information Commission

The structure of the CIC can be analysed by dividing it into three parts – the offices of each Information Commissioner, commonly referred to as the Registries, given the predominantly quasi-judicial functions performed by the Information Commissioners; the Secretariat, which is the administrative branch of the CIC; and the Receipt and Dispatch Section, which though administratively not separate from the Secretariat, performs very distinct functions.

- **The Offices of Information Commissioners**

Unlike many other quasi-judicial and judicial bodies, the CIC does not have a centralised Registry. It does have a post of Registrar which is currently vacant and looked after by the Secretary of the CIC. Instead, the CIC works through the individual offices of each Information Commissioner. Each Information Commissioner has an attached office with 8-9 staff members (excluding peons and

⁸²Information available under CIC's Section 4 disclosure at <http://cic.gov.in/CIC-Section4/Section-4-1-b-11.pdf> (last visited on 27 July 2011).

drivers). Officially, the staff is appointed either as 'personal staff' for the Commissioner or as part of the Registry. The Registry of each Information Commissioner is headed by a Deputy Registrar and generally consists of one Personal Secretary/ Assistant, 1-2 Stenographers and 3-5 Data Entry Operators (DEOs). There are three legal consultants attached to the office of three Commissioners. Two of the current Deputy Registrars are Consultants, retired government employees who have been hired by the CIC. The rest have been sent to the CIC on deputation from different Ministries.

The Registry is expected to handle all work related to cases before the Information Commissioner. The personal staff, is expected to assist the Commissioner by attending to calls, dealing with personal correspondence, taking dictation, etc. Given the workload in the Commission, in most offices, the distinction between the Registry and 'personal staff' is blurred, with most personal staff members assisting the Registry.

Offices of Information Commissioners work independently from each other, with little formal interaction between them. This is because of the manner in which work has been distributed within the Commission. The Chief Information Commissioner 'allocates' Ministries and Union Territories (including Delhi) to different Information Commissioners. Any matter coming to the Commission is dealt with by the office of the Information Commissioner to whom the relevant Ministry or Union Territory has been allocated.

Only rarely exceptions are made to this system of allocation. Cases are then heard by Information Commissioners who do not ordinarily deal with that public authority. This usually happens either when an Information Commissioner wishes to recuse himself or herself from the case of a particular appellant/complainant or where an appellant/complainant has moved an application that his or her case should not be heard by a particular Information Commissioner. In the latter set of cases, the concerned Information Commissioner may reject the application and continue to hear the case or request the Chief Information Commissioner to transfer the case to a different Information Commissioner.

- **The Secretariat**

The Secretariat is headed by the Secretary who is a Joint Secretary to the Government of India. The Secretariat of the Commission can be divided into four divisions – the Establishment section, the

Procurement section, the Legal section, the Cash section and the RTI Cell.

- ❖ The Establishment and Administration Section looks after issues relating to the service matters of the staff of the Commission and all infrastructure and housekeeping related matters.
- ❖ The Legal Section provides legal assistance to the Commission, looks at cases in the Courts in which the Commission is a party as well as cases which may be filed by the Commission.
- ❖ The Planning and Budget section handles all bills, receipt of IPOs, penalty amounts etc.
- ❖ The RTI Cell deals with all the RTI Applications filed with the Commission. It is headed by a Nodal CPIO who is assisted by 1 DEO, 2 Stenographers (Hindi and English) and 1 peon. The number of RTI Applications being filed with the Commission has gone up in the last three years. Based on information provided by the RTI Cell –

Table 2: Number of RTI Applications received by the CIC from 2008-2011

Year	Number of RTI Applications received
2008-2009	1304
2009-2010	2160
2010-2011	3361

The Commission has designated the Deputy Registrar/Designated Officer of every Registry as the CPIO for that Registry. So when a RTI Application is received by the Nodal CPIO, if it relates to a matter dealt with by a particular Commissioner's office, he forwards it to the concerned CPIO. The First Appellate Authority is the Additional Secretary. All appeals against the orders of the First Appellate Authority lie before the Chief Information Commissioner.

• The Receipt and Dispatch Section

The Receipt and Dispatch section of the Commission is divided and situated in three different locations. The Receipt section, sometimes (misleadingly) referred to as Central Registry, is located in one building in the Old JNU campus. There is a dispatch section in the August Kranti Bhawan with 1 DEO and a dispatch section in the Club Building, Old JNU Campus with 1 peon.⁸³

⁸³Mr. S. Gandhi's office started undertaking dispatch function internally in 2010 as the central Dispatch section was facing a backlog of work.

The Receipt section has a staff of 6 DEOs and is overseen by an Assistant, who is the only regular staff in this section. This section is responsible for ensuring that all the communications (*dak*) received in the CIC, either by hand or in post, is recorded in a database, a unique diary number is assigned to it and the name of the officer or Registry to whom it is being forwarded to is marked on it.⁸⁴ For the last one year, since the CIC has started digitizing its records, all communications (except personal correspondence of the CIC's officers) is scanned and uploaded in the same database. This work has been outsourced by the CIC.

Functioning of the Central Information Commission

As the major function performed by the CIC is in its capacity as an adjudicator, the functioning of the offices of the individual Information Commissioners is a very crucial aspect in the overall working of the CIC. Since each office works independently, work practices have developed within each office in a manner best suited to the particular Information Commissioner's approach to his or her mandate. The Deputy Registrars in most offices also play a very important role in modeling the manner in which each office functions. Despite this, there is a basic work flow relating to new cases which is similar in all offices.⁸⁵

There is a considerable percentage of correspondence coming to the CIC which can neither be registered as a new complaint or appeal nor is it related to an existing one. This category of correspondence would include cases in which the person has not filed all the required documents, some clarification with regard to the RTI Act or appeal process is being sought, copy of a document is being sent to the CIC, etc.

Like many other government organisations, the CIC has a significant number of persons on its staff which has been appointed through a contractor and are not regular government employees. A list of regular and outsourced staff in the CIC was provided to the researcher giving the status as on 07 July 2011. According to this list, out of 129 staff members currently working in the CIC, 93 are outsourced, including 23 peons. There is high turn-over of outsourced employees particularly the Data Entry Operators (DEOs).

⁸⁴The basic work-flow in the Receipt Section is provided in Appendix IV.

⁸⁵The basic work-flow in an Information Commissioner's office in relation to cases is presented in Appendix V.

There is generally no change in the office to which a staff member is attached to unless the Information Commissioner retires, in which case the staff is reallocated to the remaining offices.

The officers of the CIC are on deputation to the CIC from different Ministries/Departments as the CIC does not have a cadre of its own. As per service rules, they are generally permitted to remain on deputation for three years which may be extended upto five years. The regular staff of the CIC is sent by the DoPT. The CIC does not have much say in the selection of the staff. Recruitment rules for the CIC are in the process of being finalised.⁸⁶ Once these are finalised, the CIC would be able to recruit persons directly.

Most cases are heard by Information Commissioner individually, i.e. as single Benches. If there are certain complicated questions arising in a case, the matter is referred to the Chief Information Commissioner for the constitution of a larger Bench. The Chief Information Commissioner draws his power to constitute Benches from the Central Information Commission (Management) Regulations 2007. These Regulations had been framed by former Chief Information Commissioner, Mr. Wajahat Habibullah, in exercise of his powers under Section 12(4) of the Act. The vires of these Regulations came in question in a writ filed before the High Court of Delhi in 2009 - *Delhi Development Authority v. Central Information Commission & Another*.⁸⁷ The High Court of Delhi in its judgment dated 21 May 2010 quashed the Regulations as being *ultra vires* the RTI Act. Significantly, it held the constitution of Benches in the CIC to be illegal.

The CIC approached the Supreme Court against the order of the High Court on the specific issue of Bench constitution in *Central Information Commission v. DDA*.⁸⁸ The Supreme Court in its order dated 18 October 2010 has stayed the order of the High Court and allowed the CIC to continue to sit in Benches while hearing cases filed before it.

For the purposes of this Report, the legality of constitution of Bench has been assumed. The functioning of the CIC would become unsustainable if the Supreme Court holds that the CIC cannot hear cases in Benches and all Commissioners have to hear each case.

⁸⁶Only Recruitment Rules for drivers have been finalised till the date of writing of this Report. Interview with Mr. G. Subramanian, Under Secretary & Deputy Registrar.

⁸⁷W.P. (C) No. 12714/2009.

⁸⁸S.L.P. No. 15615/2010.

An amendment to the current law would then be required to permit the CIC to constitute Benches.

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Having given a brief overview of the RTI Act, the functions and powers of the CIC, and a brief description of its structure and present functioning, the next Part of the Report analyses the various issues arising in the functioning of the CIC, discusses the problems faced by it and proposes some possible solutions.

II

ISSUES AND ANALYSIS

The CIC is nearing six years of being in existence. In these six years, it has caught the public attention and has been in the eye of the media to an extent that perhaps no other quasi-judicial body has been. Mr. Wajahat Habibullah has called the Information Commissions 'the most visible aspect of the RTI-regime'.⁸⁹ This is mainly because of two reasons.

First is the revolutionary nature of the Act and the different ways in which it is being used to expose corruption and malpractices in the governance of the country. This has meant that the CIC is deciding on issues which are quite often of immense public interest. The second and somewhat related reason is that given the wide ambit of the Act and its widespread relevance, the CIC is approached by a broad spectrum of people, with a variety of concerns. Other quasi-judicial and/or statutory bodies like the National Human Rights Commission, the National Commission for Scheduled Caste, the National Commission for Scheduled Tribe, the National Commission for Women, and the Consumer forums and Commissions have a restricted mandate and the people who approach these bodies are also a much smaller set of people than those who are likely to approach the CIC.⁹⁰

With the high visibility and power to open 'closed doors' comes the associated expectation of 'justice' and grievance redressal. Perhaps the only quantifiable indicator of that is the number of cases being filed in the CIC which has been increasing every year. According to statistics available on the CIC's website, by the end of April 2011, it had disposed more than 70,000 cases since its inception and now has over 18,600 pending cases.⁹¹ But there is also a definite call for the CIC to play a more proactive role in enforcing *suo moto* disclosure obligations under the Act and for imposing penalties which would in turn act as a deterrent for PIOs who do not obey the rule of the law.⁹² The CIC is not viewed as any other statutory body deciding

⁸⁹See *Welcome Address by Mr. Wajahat Habibullah*, *supra* n.11.

⁹⁰*Point of discussion during interview with Mr. Nikhil Dey.*

⁹¹*Data on Monthly Disposal available at <http://www.cic.gov.in/> (last visited on 30 July 2011).*

⁹²See *Major Findings and a Draft Agenda for Action, People's RTI Assessment 2008-2009*, available as *Annexure to Shekhar Singh*, *supra* n.5.

formal complaints under a particular law. It is considered to be a medium to achieve the goal of a fully transparent and accountable democratic government. Its voice, even if considered weak by some, is normatively very important for the Indian citizenry and the polity.

But when expectations run high and the final goal is so ambitious, it is easy to overlook what makes (or breaks) the institution – its nuts and bolts.

In this section of the Report many of the key issues relating to the functioning of the CIC are discussed along with the problems faced by it and possible solutions. The issues have been broadly grouped into two categories – issues relating to the CIC's quasi-judicial functions and issues relating to the administration of the CIC. The categorisation has been done for ease of discussion, although it is admitted that the issues are linked.

ISSUES RELATING TO THE CIC'S QUASI-JUDICIAL FUNCTIONS

Case load

The CIC's predominant function is quasi-judicial in nature – deciding complaints and appeals filed under Sections 18 and 19 of the Act. The number of cases registered by the CIC in 2006-2011 is shown in Table 3:

Table 3: Number of cases registered in the CIC in 2006-2011 and percentage increase in the number of cases

Year	Number of Cases* Registered	% Increase in number of Cases
2006	4923	-
2007	10274	109%
2008	14565	42%
2009	21509	48%
2010	27585	28%
2011	29201**	6%

* Refers to both complaints and appeals

** Estimate based on data of January to May 2011

It must be mentioned here that the number of cases registered is not equal to the number of cases received by the CIC in the same year for the following reasons:

- ❖ The CIC does not register cases it has received on the same day. It is not uncommon for cases to be registered many months after they have been received by the CIC.
- ❖ Some Information Commissioners treat non-compliance of their orders as a complaint which is registered separately.
- ❖ From October to December 2010, three Information Commissioners have retired. All pending correspondence of the three offices were reallocated to the remaining six offices as no new appointments were made. This caused a major backlog in the work of most offices which were already handling a heavy workload. This has meant that hundreds of correspondence received by the CIC are still lying in stacks without being any action being taken on them. This may explain, at least to some extent, the drop in percentage increase in filing from January to May 2011.

From the rate of increase in number of cases over the last five years as shown in Table 3, it is not possible to discern any trend. The vast variation in the rate of increase over the years cannot be explained by any one factor. While, one optimistic view could be that PIOs and First Appellate Authorities are more conversant with the Act now and are providing complete information at their level; thereby not requiring an Appeal to be made to the CIC. Another view could be that the CIC's orders over the last five years have clarified several aspects of the law and the penalties that have been imposed or compensation that has been awarded to appellants have acted as a deterrent.

At the same time, a more pessimistic view is that people perceive the CIC to be an ineffective appellate forum and therefore are not approaching it. Furthermore, the number of penalties imposed by the whole CIC till date is extremely low⁹³ and in many instances penalty orders have been challenged in the High Courts through writ petitions. Therefore, it is unlikely that there has been any substantial deterrent effect from the imposition of penalties or award of compensation.

Given that there is no discernable trend in the increase in the number of cases registered in the Commission annually, any forecast of the Commission's work load in the near future would necessarily have

⁹³See for discussion on imposition of penalty by Information Commissions, Press Note - Information Commissioners cause a loss of Rs 86 crores, *supra* n. 21.

to take into consideration several possibilities. In Table 4, forecasts have been made regarding the number of cases that are likely to be registered in the Commission assuming different rates of increase, base year being 2011, during which based on five month data available 29201 cases are likely to be registered.

Table 4: Forecast of number of cases the CIC will register from 2011-2015

	5% increase	10% increase	15% increase	20% increase	25% increase
2011	29201	29201	29201	29201	29201
2012	30661	32121	33581	35041	36501
2013	32194	35333	38618	42049	45627
2014	33804	38867	44411	50459	57033
2015	35494	42753	51073	60551	71292

On the other side of the equation is the number of cases disposed by the CIC. The number of cases disposed by the CIC in 2006- 2011 has been given in Table 5.

Table 5: Number of cases disposed by the CIC in 2005-2011

Year	Number of Cases* disposed	No. of Information Commissioners
2006	2690	5
2007	6979	5
2008	10285	8 since August
2009	19633	9 since September
2010	23573	9 till October
2011	21106**	6

* Refers to both complaints and appeals

* Estimate based on data of January to May 2011

In March 2011, the CIC set itself a norm for minimum disposal of 3200 cases per year per Commissioner.⁹⁴ Given that at present there are six Information Commissioners, this means annually the CIC is expected to dispose 19200 cases. If the Commission is fully constituted with 11 Information Commissioner, then the annual disposal would be 35200 per year. Based on this, the shortfall in disposal of cases as compared to the number of cases received with different estimates given in Table 4 is represented in Table 6.

⁹⁴Minutes of the CIC's meeting held on 22.03.2011 are available at <http://www.cic.gov.in/> (last visited on 30 July 2011).

Table 6: Shortfall in case disposals based on different case registration estimates in Table 4

	5% increase in case filing	With 6 ICs disposing 19200 cases	With 11 ICs disposing 35200 cases	10% increase in case filing	With 6 ICs disposing 19200 cases	With 11 ICs disposing 35200 cases	15% increase in case filing	With 6 ICs disposing 19200 cases	With 11 ICs disposing 35200 cases	20% increase in case filing	With 6 ICs disposing 19200 cases	With 11 ICs disposing 35200 cases
2011	29201	10001	-5999	29201	10001	-5999	29201	10001	-5999	29201	10001	-5999
2012	30661	11461	-4539	32121	12921	-3079	33581	14381	-1619	35041	15841	-159
2013	32194	12994	-3006	35333	16133	133	38618	19418	3418	42049	22849	6849
2014	33804	14604	-1396	38867	19667	3667	44411	25211	9211	50459	31259	15259
2015	35494	16294	294	42753	23553	7553	51073	31873	15873	60551	41351	25351

Negative values represent more disposal than cases filed

ICs- Information Commissioners

The estimates in Table 6 are based on the following assumptions:

1. The estimates are based on the assumption that the CIC is starting with a clean slate and that it has no pending cases which are carried over from 2010 to 2011. This is actually not correct because the closing balance in the month of December 2010 for the Commission was almost 18,600 cases.
2. The disposal figures are representative of the fact that the CIC has issued a decision in a matter. It does not indicate compliance of the order. Therefore the number of cases as such pending before the CIC either for an order or for compliance would be higher than the shortfall calculated above.

Table 6 presents a rather dismal picture of the case load and pendency in the CIC in the five years. It is very clear that given the present strength of six Information Commissioners even if the minimum disposal norm is followed and 19,200 cases are disposed by the CIC, it would be grossly inadequate to meet the likely workload for this year which is of 29,201 cases. More than one-third of the cases registered in 2011 will remain pending and will add to the existing backlog of more than 18,600 cases.

Turning to other scenarios – assuming that the CIC continues to be partially constituted with six Information Commissioners, if one takes a conservative estimate of 5 per cent increase in the number of cases registered in the CIC annually, and the Commission

disposes 19,200 cases, then a backlog of at least 11,400 cases will be created just in 2012; which will go up to more than 16,000 cases in 2015.

If, on the other hand, the CIC is fully constituted with eleven Commissioners and it disposes 35,200 cases by meeting the minimum disposal norm, the situation looks a lot more positive. The CIC would be disposing far more cases than it is registering - at least till 2015. This would allow the CIC to be in a position to clear the previous backlog. However, from 2015, the backlog will start building up once again.

Even with a fully constituted CIC, in every other rate of increase scenario presented above, there is going to be a creation of backlog from 2013 itself, with each Commissioner disposing 3200 cases annually.

The creation of backlog and pendency in case disposal does not augur well for the future of right to information in the country. One of the reasons for considering the RTI Act to be revolutionary is that there is a strict response-time backed by individual penalty on the government official. This requirement of timeliness has been extended to the First Appellate Authority as well – an order has to be given within thirty days from the date on which the first appeal is filed. This period may be extended to forty five days but reasons have to be given.⁹⁵ However, no such time limit has been placed on the Information Commissions.

Justice Jayant Kumar Biswas of the High Court of Calcutta in *Akhil Kumar Roy v. The West Bengal Information Commission & Ors.*,⁹⁶ has commented on this lack of time frame for disposal by Commissions. He states:

“A second appeal arises from a decision in a first appeal under s.19(1), and a first appeal arises from a decision or a failure to give a decision under s.7. The sparkle of a strong strand of speed woven through the sections of the Act is abruptly lost in the second appeal that has been allowed to run wild. This open-ended second appeal scheme is bound to make the s.6 request go totally adrift generating a multi-tier avoidable and unwanted offshoot Court proceedings such as this case.

In my opinion, keeping in mind the respective maximum periods fixed for deciding a first appeal under s.19(1) and disposal of a

⁹⁵Section 19(6), RTI Act.

⁹⁶W.P. No. 11933 (W) of 2010; order dated 07.07.2010.

request for obtaining information under s.7, the second appellate authority should have decided the second appeal within 45 days from the date of filing thereof. In view of the scheme of the statute, I think this period should be considered the reasonable period for deciding a second appeal. I am of the view that this petition should be disposed of directing the authority to decide the appeal.”

The High Court’s observation has no binding value on Information Commissions, but its reasoning is no doubt compelling. Interestingly, there was a provision for time limit within which the Information Commissions had to decide an appeal in the RTI Bill 2004 tabled in the Parliament. This provision perhaps had its source in the recommendations given by the civil society groups⁹⁷ to the NAC and the recommendations given by the NAC to the Government. However, mysteriously this time limit was dropped in the final law even though there was no apparent objection to it and the Parliamentary Standing Committee report also made no recommendations on this issue. During an interview, Mr. Shekhar Singh said this was a typographical error as the clause number for second appeal was amended but the corresponding change was not made in the clause laying down the time-frame. Mr. Nikhil Dey, on the other hand, stated that this was done deliberately and by the time it was noticed, it was too late to make any changes. Be that as it may, this error or omission has meant that the Information Commissions across the country are not legally bound to meet any time limit.

While there may be no legal obligation on an Information Commission to dispose of a case within a stipulated time, but the spirit of the Act certainly supports the necessity for Commissions to decide within a reasonable time frame. In many appeals before Commissions, the value of the information sought is lost or significantly diminished if the case is pending for several months. For instance, appeals in which information sought by the RTI Applicant is required to expose ongoing corrupt practices in a government body, or to present during a court hearing, or where the RTI Applicant wants to know about the action taken on his or her application for a passport or a ration card. In these cases, the Commission may finally order the disclosure of the information to the Appellant. But by then the Appellant has already suffered due to the delay in obtaining the information and the potential enhancement of public good by exposing corrupt practices has been adversely affected.

⁹⁷NCPRI and CHRI.

The need for timely disposal of the cases has been emphasized by the Information Commissioners themselves. A Committee of Information Commissioners in a report released in September 2009 stated that:

‘Speedy disposal of complaints and pending cases should be a priority for Information Commissions to avoid, as far as possible, an uncontrollable rise in the number of appeals and complaints pending hearing. ... There should be time limit for disposal of all appeal cases by the Information Commission.’⁹⁸

Soon after Mr. AN Tiwari was made Chief Information Commissioner, it was decided that cases which were older than a year would be taken up on a priority basis.⁹⁹ Subsequently, the setting of a minimum disposal norm of 3200 cases per Information Commissioner was an official acknowledgement that there was a need for expeditious disposal of cases.

As discussed above, the CIC’s response to the problem of increasing pendency in the form of setting a minimum disposal norm of 3200 cases will fall far short of what is required. Even if all eleven Commissioners are appointed, and they all dispose the minimum number, given the existing pendency of over 18,600 cases, the Commission will still have a backlog. The number 3200 for that reason seems quite arbitrary particularly since four of the six current Information Commissioners disposed more than 3200 cases in 2010.

The Information Commissioners should have been more ambitious if they wish to reduce pendency significantly. The numbers have to be increased to a number in the range of 4000-5000 cases annually per Commissioner. This is certainly possible. In 2010, Mr. S. Gandhi disposed more than 4500 cases and Mrs. A. Dixit disposed almost 4000 cases as can be seen in Table 7.

In Figure 1, the increase in number of cases being filed in the CIC are plotted against six disposal scenarios – six or eleven Information Commissioners disposing 3200, 4000 or 5000 cases each annually. This shows the inadequacy of disposal of 3200 cases per Information Commissioner even if the CIC is fully constituted. It also shows that in comparison disposal norm in the range of 4000 and 5000 would certainly be a lot more desirable.

⁹⁸Report available at <http://www.cic.gov.in/> (available at 25 July 2011).

⁹⁹These cases were treated as ‘Special Drive’ cases and were distributed amongst Commissioner’s offices (irrespective of Ministry/department allocation) and the registries were expected to dispose them on a priority basis.

Table 7: Case disposals by Information Commissioners in 2010

Information Commissioners	Cases disposed in 2010
Annapurna Dixit	3965
ML Sharma	3257
Shailesh Gandhi	4599
Satyanand Misra	3475
Sushma Singh	1939
Deepak Sandhu	1859

** Estimates based on figures of January to May 2011*

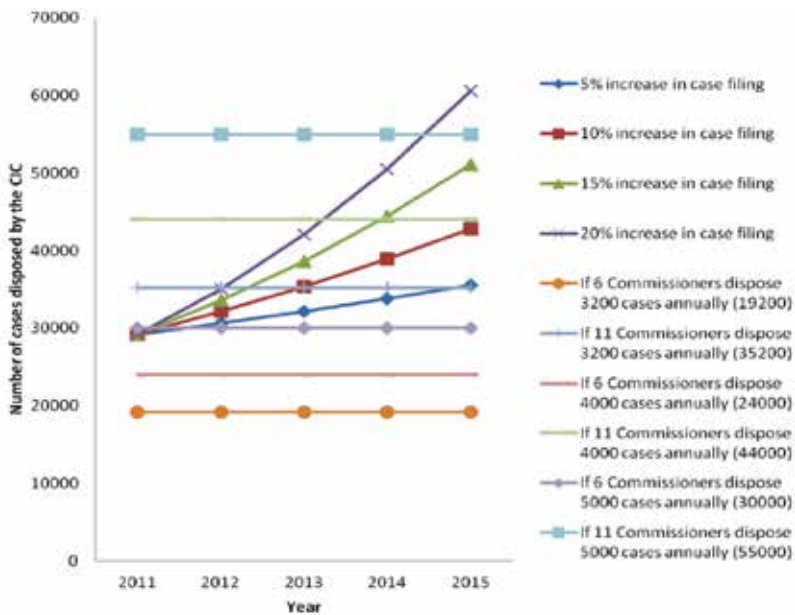


Figure 1: Increase in number of cases being filed in the CIC and disposal forecasts

To achieve a target of 4500 cases annually by each Information Commissioner although not impossible is definitely difficult. The Information Commissioners would have to change some of the current work practices in their offices. What follows is an analysis of ways in which the CIC can increase its disposal without compromising on the quality of ‘justice’.

It must be stated at the outset, that the following recommendations can only be implemented if the CIC is supported by an able and efficient staff.

- **Increase the number of hearings per day to at least 18-20 cases**

Currently three of the six Commissioners hear 18-20 cases a day, the others hear between 12-15 cases a day. If the number of hearings are increased to 18-20 cases a day, with perhaps one day with 12-14 hearings to give time for meetings that need to be scheduled, then the number of disposals per Commissioner per week after hearing would be 84-94 and per month would be 336-376 cases.

A question which then arises – is there enough time to hold 18-20 hearings a day. Hearings of three Information Commissioners were observed and the average time take by Commissioners to hear each case was calculated to be 10-12 minutes. Even assuming an outer limit of 15 minutes, time taken for hearing cases is given in Table 8.

Table 8: Time taken to hear cases

Number of cases	Time taken to hear
12 cases	3 hours
14 cases	3 and half hours
18 cases	4 and half hours
20 cases	5 hours

If Commissioners hold hearings from 10.30 am to 1 pm and 2.30 pm to 5 pm, they can comfortably hear 20 cases. Factoring in time needed to hold penalty proceedings, meetings with public authorities and civil society, time to draft orders, leaves taken by Commissioners, etc., the estimate of 336-376 cases per month can be revised to 320. Just by increasing the number of hearings per day, each Commissioner can achieve a minimum disposal of 3840 cases annually.¹⁰⁰

Increasing the number of hearings per day would consequently increase the amount of time the Commissioners would have to spend in preparing for the case and then writing the order. To cut down on the preparation time, it is suggested that a brief of the case or a summary is prepared for each case for the Commissioner. This practice is currently followed only in Mr. S. Gandhi's office. Other Information Commissioners either read the file the day

¹⁰⁰The CIC disposes most complaints without hearings. Therefore the disposal of all cases in the Commission is much higher than the number of hearings held by it.

before the hearing or during the hearing. In most Registries, other than that of Mr. S. Gandhi, the substantive work of preparing for a case or writing a summary of the case/submission is done by the Information Commissioner and/or the Deputy Registrar. The staff is neither qualified nor trained to prepare case briefs for the Commissioners.

Summaries in Mr. Gandhi's office are prepared by interns who are usually law students. The interns spend 6-8 weeks in the office. When there are no interns, some of the staff members who have been trained to write summaries prepared the same. A format has been developed by this office which is reader-friendly and presents the facts of the case in an organized fashion. It gives the following information-

- Name/designation and addresses of the parties;
- Relevant dates (date of RTI Application, PIO's reply, First Appeal, Order of First Appellate Authority, date on which the Appeal was received by the Commission);
- Information sought in the RTI Application in brief;
- the PIO's reply in brief;
- grounds for First Appeal, if any;
- Order of the Appellate Authority, if any;
- Grounds for the second appeal/ complaint.

Persons with a good working knowledge of English and Hindi, having a basic understanding of the RTI Act and who can use a computer can prepare at least 14 summaries in a day. Given the nature of the RTI Act and the appeals/complaints which come to the Commission, a degree in law is not necessary to understand the cases. If two persons are hired in each office with these qualifications, they can easily prepare 28 case summaries in a day.

As the documents are available to the Commissioner along with the summary, she or he can at any time verify the information given in the summary or read the documents for clearer understanding.

Preparation of case summaries or briefs can prove to be helpful in many ways-

- ❖ First, it is common for Appellants to provide a lot of information and annexures with their appeals/ complaints which are lengthy

and sometimes not relevant to the cause of action at hand. The summary helps the Commissioner to get the gist of the case before the hearing and to concentrate on the issues arising under the provisions of the RTI Act.

- ❖ Since persons registering cases are generally DEOs who do not read all the documents submitted by the appellant/complainant and therefore do not understand the whole case, they sometimes miss the fact that there are more than one departments/ PIOs involved in the matter or that there is third party involvement and should therefore be heard by the Commission. The persons making the summaries would be able to spot these facts and can therefore ensure that the notice of hearing is sent to all concerned parties. This can prevent adjournment of cases due to relevant parties not being given notice.
- ❖ Thirdly, in some cases clarifications are required with regard to the documents that have been submitted to the Commission (e.g. address is not clear or the photocopy is too light), persons making the summary can contact the parties on the phone to seek clarification.
- ❖ Fourthly, summaries or at least part of the summaries (particularly the relevant dates and gist of the information sought) can become part of the final order and this would make the order more informed.¹⁰¹ It is seen that most orders of the CIC do not record several important facts of the case. This reduces the precedential value of these orders significantly and this has a long term impact on building a right to information jurisprudence.

- **Decide more cases based on written submissions only**

Presently, the trend in the CIC is that appeals are decided after a hearing is held by the Commissioner while most complaints are decided based on written submissions presented to the CIC. If more cases are decided based on written submissions, then a hearing need not be held and time is saved.

A significant percentage of the cases filed with the CIC are routine in the sense that they do not raise a complicated question of law.

¹⁰¹Mr. S. Gandhi uses the summary as the first part of his final order. This way he does not have to repeat the facts of the case while dictating the order. During the hearing, he makes necessary changes to the summary of the facts. This is also the reason that he is in a position to hand over the order to the parties immediately after the hearing is over.

They may raise a commonly agitated issue which the CIC and even the High Courts have decided upon previously.¹⁰² In such cases, the Commissioners can simply direct the respondents to provide written submissions and decide the matter based on the documents before the Commission. If necessary the CIC can also indicate a binding ruling in its notice itself and direct the parties to respond accordingly. A personal hearing by the Commissioner in such cases would not change the decision of the Commission. This would save the time spent by the Commission in holding a hearing and would also save time and money spent by the parties to attend the hearing. In case the Commissioner is of the opinion that he requires further clarification with regard to the facts of the case, he can always schedule a hearing and give the decision only after hearing both sides.

Directions to provide written submissions also suffice to fulfill the principles of natural justice. The Central Information Commission (Appeal Procedure) Rules 2005 provide in Rule 5 that while deciding an appeal the Commission may hear oral or consider written evidence on oath or on affidavit from the concerned or interested parties. Therefore, there is no mandatory requirement for a personal hearing under the Act and its Rules. The Courts in India have held that the right to hearing does not entail a right to an oral hearing. Submission of written representation by the concerned persons would also meet the requirements of giving a hearing to parties before deciding a matter. The Supreme Court has held in *Union of India & Anr. v. M/s Jesus Sales Corporation*¹⁰³

“The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants

¹⁰²For example cases in which copies of OMR sheets (answer sheets) have been sought from educational institutions. The High Court of Delhi has categorically held that optical answer sheets have to be provided.

¹⁰³1996 SCC (4) 69; upheld in *Ganesh Santa Ram Sirur v. State Bank of India & Anr.* (2005) 1 SCC 13.

concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded."

- **Decide cases with similar fact situation and same issue of law as a batch**

While analyzing decisions, it was noticed that in some of the cases the appellants had sought similar information and the decision of the Commissioner, understandably, was almost identical. For instance in three of the cases analysed,¹⁰⁴ the appellants had sought information about third party customers of a bank. The Information Commissioner's decision in all three was the same – the information is exempt from disclosure under Section 8(1)(d). In another three cases,¹⁰⁵ the CIC relied on the decision of the High Court of Delhi in *Indian Institute of Technology Delhi v. Navin Talwar*,¹⁰⁶ directed the Central Board of Secondary Education to provide OMR sheets and model answer key. However, in both the cases, separate hearings were held for all the cases. It is not uncommon for the Courts in India to combine cases with similar cause of action, hold common hearings and give a single decision. The CIC has done this on previous occasions¹⁰⁷ but there is huge scope to institutionalise this

¹⁰⁴*Poornwasi Jaiswal v. CPIO, Punjab National Bank, CIC/SM/A/2010/001009; Poornwasi Jaiswal v. CPIO, Union Bank of India, CIC/SM/A/2010/000917 & 107; Satish Chahal v. CPIO, IDBI Bank Ltd., CIC/SM/A/2010/001092.*

¹⁰⁵*Kailash Chand v. CBSE, CIC/DS/A/2010/001713; Amit Godara v. CBSE, CIC/DS/A/2010/001757; Dayanand Jha Mahamaya v. CBSE, CIC/DS/A/2010/001720.*

¹⁰⁶*W.P. (C) No. 747 of 2011 and CM Appl. 1568/2011; judgment dated 07.02.2011 (wrongly quoted in the CIC's order).*

¹⁰⁷*For instance, Mr. S. Gandhi combined a series of complaints relating to non-disclosure of information relating schemes for students from economically weaker*

in the decision making process.

It is proposed that with the help of the Legal Consultant, Information Commissioners should identify such cases and hear them together and dispose them as a batch decision. This would save time for the Commission as the several orders would not have to be prepared. Also, time spent on hearing such cases would be reduced.

One good practice already in place in the CIC is the clubbing of cases with the same party. Often it is seen that an appellant has filed several appeals against the same public authority. Scheduling many such cases on the same date is found to be most convenient for all parties concerned and even for the Information Commissioner who can choose to give a common order.¹⁰⁸ Also, as the background to the issues does not have to be repeated, time for hearing all cases cumulatively is shorter than holding separate hearings.

Improve the legal assistance available to the Information Commissioners

As the RTI Act still quite recent, there are several issues which require to be settled in law. Cases in which the CIC has to decide whether a body is a public authority under Section 2(h) or an exemption has been claimed under Sections 8(1) or 9 or where penalty proceedings have been initiated, the Commissioners greatly benefit from legal assistance. Furthermore, the Commission regularly receives queries from citizens and public authorities on various aspects of the RTI Act. Presently, many of these queries are being kept aside by the Commissioner's offices due to backlog of work; case related correspondence is being given priority. It is otherwise the Deputy Registrar in each office or the official concerned in the Secretariat which replies to these queries. Many of these queries are routine and can be responded to with a standard reply, but some of the queries require application of mind and a customized reply and legal knowledge is very useful.

• The Current Set-up

The Legal Cell of the CIC is headed by the Joint Secretary (Law) and Additional Registrar who is assisted by an Assistant and a

section in Delhi Government schools and gave combined orders. See Ritu Mehra v. DDE (NE), GNCTD, CIC/SG/C/2009/000864.

¹⁰⁸One such order is *Lt. Genl. (Retd.) Avadhesh Prakash v. Indian Army, CIC/LS/A/2010/001300; CIC/LS/A/2010/000655; CIC/LS/A/2010/001603.*

Stenographer. Two posts of law officers have been sanctioned, but the same lie vacant. The Legal Cell also has a Legal Advisor. The Legal Cell, in consultation with the Information Commissioners engages government counsels to represent the CIC in cases before the courts. Three legal consultants have been hired by the CIC who are attached to the offices of three Information Commissioners.¹⁰⁹ Their work concerns only the registry/office to which they are attached and they are not involved in the working of the Legal Cell as such.

The work of the Legal Cell involves providing legal advice to Information Commissioners and other officers of the CIC; particularly in matters where more than one Information Commissioners constitute the Bench. It handles cases which have been filed in Courts in which the CIC is a party and also keep track of those in which the CIC has not been made party. In consultation with the Information Commissioners, it decides whether to challenge an adverse decision of a High Court. The legal consultants in each office assist the Information Commissioner in drafting his or her order and preparing notices.

While the above is a formal listing of the Legal Cell's and legal consultants' functions, their most important function is to bring in a measure of credibility in the decisions of the Commission and hence, in a way, increasing people's faith in the Act and the CIC. This is done in mainly two ways. First, by assisting the Commissioners in pronouncing orders after due consideration of various legal aspects including those which are not covered by the provisions of the RTI Act and second, by properly defending orders passed by the CIC in higher judicial forums.

- **Need for 'Judicial Clerks'**

Information Commissioners are not typically trained in law or in the judicial processes. Therefore conducting quasi-judicial proceedings, interpreting provisions of the law and applying it to a particular set of circumstances can be occasionally difficult for a Commissioner. Commissioners would be greatly benefitted if they were each assisted by at least two lawyers as judicial clerks. Judicial clerks in many parts of the world assist judges in discharging their judicial functions. Since 1990s, courts in India have also started taking on judicial clerks to assist the judges. The Supreme Court of India,

¹⁰⁹Mrs. A. Dixit, Mr. S. Gandhi and Mrs. S. Singh; Mr. S. Gandhi has also employed another lawyer to assist him and personally covers his salary.

the High Courts of Delhi, Rajasthan and Karnataka are some of the Courts which have appointed Law Clerks-cum-Research Assistants.¹¹⁰ The work of a judicial clerk involves reading case files, and preparing case summaries and notes in a manner in which the Judge can get a good understanding of the matter including the legal issues involved; finding relevant case laws; researching the various legal aspects of the case, etc. Full-time judicial clerks (or legal consultants) with a similar job profile need to be appointed for each Commissioner. The judicial clerks/legal consultants can assist the Commissioners in many ways-

- ❖ First, she can prepare a set of criterion, after discussion with the Commissioner and the Joint Secretary (Law), to distinguish routine cases from the more complicated cases. The routine cases, although not an air tight category, would generally consist of cases where the decision making process is likely to be quite straight-forward mostly because the information has to be without doubt disclosed as no exemption has been claimed or can be applied or where what has been sought is clearly not information (grievances which evidently fall outside the definition of information). The more complicated cases are those in which the CIC has to decide a question of law or the applicability of certain provisions of the Act. For instance, cases in which a body refuses information by claiming that it is not a public authority, or where an exemption under Section 8 or 9 of the Act has been claimed or in which penalty provisions have to be initiated.

The differentiation of the routine cases from the more complicated cases can be used to decide how in depth the scrutiny by the Commissioner will be and how the matter might be disposed – whether additional submissions are required, whether a hearing is necessary, whether there is a previously settled position of law which can be applied to a number of cases, thereby disposing them in a ‘batch decision’.

- ❖ Secondly, the judicial clerk can prepare detailed research notes including case law research on the more complicated cases before the case comes up for hearing and discuss her

¹¹⁰Examples of Notifications advertising posts of law clerks/judicial clerks are available at http://www.lawyersclubindia.com/mobile/notification/display_notification_list_mobile.asp?notice_id=310 (Karnataka); <http://hcraj.nic.in/Lawclerk.pdf> (Rajasthan); <http://lawandotherthings.blogspot.com/2006/06/supreme-court-clerkships-in-india.html> (general information on clerkship in the Supreme Court) (last visited on 28 July 2011).

research with the Commissioner. In some of the cases, the legal consultants can attend the hearing to get a better understanding of the facts of the case so that they can prepare their advice accordingly. Several High Courts in the country have now passed decisions on various issues of the RTI Act which can be useful for the Commission while deciding an issue. Furthermore, on some occasions, general principles of law such as those relating to administrative law and constitutional law are relevant and the legal consultant would be in a better position to identify such issues and research on them.

In the cases where the Commission has to decide whether a body is a public authority or not and where penalty proceedings have been initiated, the Commission often seeks written submissions from the concerned parties which could be very voluminous. The Legal Consultant can assist the Commissioner in going through these documents and culling out significant issues and arguments.

- ❖ Thirdly, there is a huge scope of improvement in the quality of orders passed by most Information Commissioners.¹¹¹ One Commissioner mentioned during an interview that it was important to give brief but reasoned orders as there was so much work pressure. But the reason that the quality of orders is not upto the mark is also because the Commissioners are not given any form of judicial training before or after they are appointed. Therefore, their understanding of essential elements of an order may not meet the generally accepted norms in the Indian judicial system. In such a scenario, judicial clerks can assist the Commissioner and advise him on the ways in which the decisions, given the final conclusion that the Commissioner may have reached, can be improved qualitatively.

Quality of Orders

As has been mentioned in the last section the quality of orders passed by the CIC leaves much to be desired. This is not a comment on the final decision reached at by the CIC but on the decision making process and how well informed the order itself is. An order should typically include the facts before the CIC, the issues involved, the arguments and the reasoning of the CIC. But very often it is seen that orders of the CIC are very cryptic without proper reasoning and

¹¹¹*Discussed in further detail in the next section.*

the final order is unclear to a person who is not well-conversant with the facts. Even the relevant dates, such as when the RTI Application was filed and replied to, date of first and second appeal, date of first appellate authority's order are not included.

The lack of proper reasoning has been the ground for High Courts to strike down orders of the CIC on certain occasions.¹¹² In *Union of India v. Vivek Bhatia*, the High Court of Delhi observed :

"In the impugned order under challenge, the scope and ambit of the said provision has not been considered and examined. Compensation under Section 19(8)(b) can be awarded but the question is whether compensation can be awarded for loss or detriment caused for failure to comply with the Act or compensation can be awarded for general failure to maintain true and correct records that has caused loss or other detriment. This may or may not be covered by Section 19(8) (b) of the Act but an interpretation has to be given before awarding compensation. It is also not clear from the findings in the impugned order whether the said compensation has been awarded on account of failure of the petitioner to provide requisite information as stipulated under the Act or for violation of the provisions of the Act or for harassment of the petitioner in making repeated applications before the Central Information Commissioner or on account of the fact that the respondent No. 1's ACR themselves were allegedly manipulated or tampered with." (emphasis added).

The Courts have also held in some cases that the CIC has erred by not giving an opportunity of hearing to the necessary parties.¹¹³ In *Dr. (Mrs.) Sarla Rajput v. CIC*, the High Court of Delhi while quashing the penalty order against the Petitioner held-

¹¹²Decision of the Delhi High Court in *Union of India v. Vivek Bhatia*, W.P. (C) No. 3573/2008, *Union of India (Min. of Personnel) v. CIC*, W.P. (C) No. 16907/2006, 3607, 7304 of 2007, 4788, 6085/2008 and 7930, 8396 and 9914/2009 [one of the eight cases]

Decision of the Allahabad High Court in *Dr. Kalp Nath Chaubey v. CIC*, W.P. (C) No. 428/2010.

¹¹³Decisions of the Delhi High Court in *Dr. (Mrs.) Sarla Rajput v. CIC*, W.P. (C) No. 5204/2008, *AM Attar v. CIC*, W.P. (C) No. 11930/2009; *Centre for Development of Advanced Computing v. Brig. Ujjal Dasgupta*, W.P. (C) No. 9084/2009 and *CM 6652/2009*.

Decision of the Madras High Court in *Appellate Authority and Chief General Manager State Bank of India and Central Public Information Officer and General Manager v. Shri K. Thaksinamurthy and Central Information Commissioner & Anr.*, W.P. (C) No. 7703 of 2010 and *M.P. No. 1 and 2 of 2010*

“5. Before imposing penalty of Rs. 25,000/- vide order dated 15th December, 2007 reasonable opportunity of hearing was not granted to the Public Information Officer i.e. the petitioner. No notice was issued to the petitioner to explain her stand and justify her position...” (emphasis added).

As a young institution set up under a relatively recent and path-breaking legislation which questions several archaic norms of governance, the CIC has to establish itself as an independent, effective and credible quasi-judicial body. If a significant number of its orders are struck down by Courts, the CIC's effectiveness and decision-making abilities come into question. The quality of orders is particularly important because it is not necessary that the Information Commission will be made a party to the case before the High Court and therefore it may not get an opportunity to defend its order before a Court of law.¹¹⁴

Complaints

Complaints filed before the CIC are usually not listed for hearings and are decided based on the papers submitted to the CIC. An analysis of orders given in complaints as well as interviews in the CIC reveals that in most complaints Information Commissioners deliver a standard format order. While this in itself is not necessarily indicative of a poor order, it is the contents of most of these orders which are worrying. At least four Information Commissioners whose orders have been studied have adopted a peculiar style of deciding complaints.

If the complainant states that he filed a RTI Application but received no reply or he says that he filed a RTI Application and a first appeal but received reply from neither, the CIC will dispose of the matter with an order, without issuing any notice or seeking any submissions from the other party. The order will direct the PIO to provide information to the RTI Applicant if not already done so.

Mr. S. Gandhi's office follows a different procedure where on receiving a complaint a notice is sent to the opposite party seeking its views on the complaint. Based on the submissions received from the other party or on passage of time stipulated in the notice, the complaint is decided accordingly.

If the complainant states that he filed a RTI Application and received a reply with which he is not satisfied and he has directly approached

¹¹⁴See Box: Is CIC a party to cases in High Courts?

the CIC, the CIC remands the matter to the first appellate authority for deciding the complaint.

These complaint orders contain bare minimum facts (only the names of the parties and the relevant dates). The necessary parties are not heard either personally or through written submissions before the case is closed by the CIC. A show cause notice is often issued, as part of the order, to the PIO to whom the RTI Application was written to. It seems odd for a quasi-judicial body to issue a show cause notice to a person who even according to the CIC's own decision may have already given the information. A show cause notice to a government official is taken very seriously and is considered, at least, presumptively, to constitute a reprimand of sorts. For this reason, this is not an area where the CIC should proceed in this rather summary and mechanical fashion, even though it might save the CIC certain amount of time.

• The need for a balance

At this stage it is necessary to flag an important concern with regard to quality of orders. It has, at times, been argued that increasing case disposals may affect the quality of orders. This concern is valid. Some of the decisions given by the CIC have to some extent compromised on the quality of orders for the sake of brevity and perhaps speedy disposal. These cases do not define the general standard of adjudication in the CIC and neither is there a real trend. They are, at best, aberrations. But such cases must at least be acknowledged at this stage as warning signals of possible lapses in future as the CIC is forced to face mounting pendency.

In one case, the order states that 'respondent is directed to furnish information as per his statement made at the Commission's hearing'.¹¹⁵ During the hearing, it must have been clear to both parties and the Commissioner as to what information has to be provided by the PIO to the Appellant. But subsequently in case a disagreement arises there is no record as to what information the PIO had been directed to and had agreed to provide. The appellant would find it extremely hard to prove, based on the order of the CIC, that the PIO had not complied with the order.

In some cases, the CIC has decided to close the matter as the parties did not appear for the hearing to argue their case.¹¹⁶ While

¹¹⁵*Bhagvatsinh Sursinh Sodha v. LIC of India* CIC/DS/A/2010/00172; order dated 06.04.2011.

¹¹⁶*Lt. Col. (Retd.) I. J. S. Cheema v. Station Headquarters, Chandi Mandir* CIC/LS/A/2010/000643; *Vinay Pal Singh Negi v. Survey of India* CIC/LS/A/2010/001353.

adjourning a matter does waste the CIC's time and resources, it is possible that there might be genuine reasons why a party is not able to appear before the CIC without prior intimation. To dismiss an appeal due to the appellant's absence in the first hearing seems a disproportionate response.

In another case, the PIO had denied information to the appellant on certain points because according to him it was not information as per Section 2(f).¹¹⁷ The order states, 'After hearing the parties and on perusal of the relevant documents on file, the Commission observes that requisite information, under the provisions of the RTI Act, has been provided to the appellant. The matter is disposed of accordingly'. The order does not state what information was sought by the appellant and why it did not constitute 'information' as per the Act.

¹¹⁷*Smt. Sharda Devi v. Delhi Police, Crime Branch CIC/SS/A/2010/001240.*

Is CIC a party to cases in High Courts?

The Delhi High Court in *Union Public Service Commission v. Shiv Shambhu* LPA No. 313/2007 and CM Appl. No. 6468/2007 has taken the view that the CIC cannot be made party to a case in which its order has been challenged, as it is a quasi-judicial body. However, in other High Courts such as the High Courts of Kerala, Bombay and Allahabad, the CIC continues to be considered a necessary party to the case.

In *Poornaprajna House Building Cooperative Society Ltd. v. Karnataka Information Commission* AIR 2007 Kant 136, the Karnataka High Court held that in reference to the Karnataka State Information Commission-

“17. The Commission cannot be equated to a civil court. The Commission is neither directly subordinate to the High Court nor its orders are subject to appellate or revisional jurisdiction of the High Court. The Commission is not even under the administrative control of the High Court. Therefore, I am of the view that the Commission is a necessary party to the proceedings because in its absence, an effective order cannot be made. The presence of the Commission is necessary for a complete and final decision on the question involved in the proceedings.” (emphasis added)

The Supreme Court of India in *Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar and another* AIR 1963 SC 786 has held that –

“...a writ of certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt. In these circumstances whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceeding...”

In a Division Bench decision of the Delhi High Court in *Central Information Commission v. Department of Posts* L.P.A. 782/2010, the Court decided to leave the issue of whether the CIC had *locus standi* to approach before the High Court open.

Therefore, the law is not really settled on whether the CIC can be a party to a writ challenging its order. One of the main reasons for not making CIC (or any other quasi-judicial/judicial body) a party to writ is that the impugned order should speak for itself. As most of the decisions of the CIC are challenged in the Delhi High Court where it cannot be a party, Information Commissioners have to ensure that their orders are well-reasoned and defensible.

Appointment of Information Commissioners

Although the Act allows for the appointment of ten Information Commissioners along with a Chief Information Commissioner, the CIC has been functioning with five Information Commissioners and the Chief Information Commissioner since December 2010. According to interviews held with the CIC and officials of the DoPT there is no likelihood of there being any fresh appointment in the near future.

The non-appointment of new Information Commissioners has meant that the workload which was previously divided between nine Commissioners (from September 2009 to October 2010) is now divided between six Commissioners. With demands on the CIC's time only increasing, the workload on each of the six Commissioners is, no doubt, immense.

An RTI Application was filed with the DoPT to request for inspection of file relating to appointment of Information Commissioners. On examination of the file notings it is clear that the Ministry has not been oblivious to this problem of non-appointment: it has very much been on its radar.¹¹⁸ As far as back as July 2010, Ministry officials noted the time-consuming nature of the process, and the desirability of initiating selection of new Information Commissioners. Till date however, this objective has not been realized and no new Information Commissioners have been appointed. While it is impossible to definitively identify the reasons for this delay, at least two factors are probably at play. One, the Ministry was considering the possibility of broader reform to the selection process to make it more transparent and consultative. While such reform might very well be normatively desirable, it has not come to pass so far. Further the possibility of such wider reform might have delayed, in the short term, the appointment of new Commissioners.

Secondly, it is certainly plausible that the controversy surrounding the challenge to the appointment of Mr. P.J. Thomas as Chief Vigilance Commissioner – and the ultimate invalidation of such appointment by the Supreme Court¹¹⁹ has created an atmosphere where the government is extremely cautious about making new appointments to important posts. The possibility that this might be a contributing factor has been suggested by various persons conversant with working of the CIC.

¹¹⁸More details about the relevant file notings are available in Appendix VI.

¹¹⁹Centre for PIL and Anr. v. Union of India and Anr. W.P. (C) Nos. 348 and 355 of 2010.

Whatever the reason might be it is certain that the non-appointment of new Information Commissioners is affecting the current performance of the CIC.

Compliance

Even the most well-reasoned and pro-transparency order of the CIC is mere rhetoric till it is properly implemented. The Information Commissioners in their orders for disclosure of information generally set a date by when the PIO has to provide the information to the appellant. When the information is not received or the correct information is not provided, the appellants write to the CIC informing it about non-compliance of its powers.

The CIC does not have contempt powers under the RTI Act. Instead, it uses its power to penalise PIOs and deemed PIOs under Section 20 of the Act to enforce implementation of its order. If the CIC has to use its power under Section 20 it has to be convinced of the nature and extent of non-compliance. It has to ask for written submissions from both parties and/or hold a hearing before it can decide.

Deciding whether an order has been fully complied with or not, is often not easy. Both parties may dispute claims of correctness of information. The PIO may not respond to notices. Appellants may not be satisfied with the information but that may be the only information available on the record. Furthermore, carefully examining complaints of non-compliance, issuing notices to parties and then holding a personal hearing takes up time.

Presently, most offices in the CIC are unable to attend to complaints of non-compliance in an effective manner. Information Commissioners and Deputy Registrars have stated that it is the heavy case load and the lack of time and staff which prevents them from paying sufficient attention to this important aspect of the decision making process.

The need for ensuring compliance of the CIC's orders cannot be emphasised enough. Non-compliance not only negates any sense of justice the appellant may deserve, but also indicates disrespect towards the institution and the spirit of the RTI Act. If appellants are given the impression that the CIC is not serious about its own orders, it would erode any degree of authority and credibility that the CIC may have built over five years.

The Deputy Registrars in each office are well-placed to assist the Information Commissioners in matters relating to compliance of orders. But they have several demands on their time and they are therefore unable to devote enough time to compliance issues. Reducing their workload by making additional staff appointments is one necessary measure.

Another measure would be for the Information Commissioners to impose penalties on more erring government officials. The deterrent effect of penalties cannot be discounted. It is often seen that the Information Commissioners are lenient towards Public Information Officers even when a clear case for delay in providing information has been made out. While Information Commissioners are of the opinion that they cannot impose penalty in every case,¹²⁰ a higher number of penalties would definitely go a long way in sending the signal that the CIC takes non-compliance of its orders and the provisions of the Act very seriously.

ISSUES RELATING TO CIC'S ADMINISTRATION

Record Management

During interviews and visits to the CIC, one of the issues, on the administrative side, that came out clearly was that the record management in the Commission was poor. Hundreds of files and records are created on a monthly basis in the CIC. Most of the files are related to CIC's quasi-judicial functions. Rest relate to general administration (including establishment, finance and staff), RTI Applications filed with the CIC, cases filed against the CIC's orders in different courts, etc. Since the constitution of the CIC to date, not a single file has been destroyed by the Commission. This means the number of files the Commission currently maintains may well be over a lakh.¹²¹ The cupboards and shelves are overflowing and files and papers are piled in every conceivable part of the rooms of the

¹²⁰Some Information Commissioners have expressed the opinion during interviews that imposing penalty may make government officials more antagonistic towards the law. According to them, it is their job to uphold the spirit of the law which is to make information more accessible and imposing penalty is not necessary for that.

¹²¹This is a back of the envelope calculation- according to the Commission's website, till April 2011, the Commission has disposed over 70,000 cases and has over 18,500 cases pending. From 2008 to 2011 more than 6500 RTI Applications have been filed with the Commission. Just by these numbers alone, the number comes to 95,000. Add to this the number of cases which have been filed since May 2011, general administration files, legal files, files for first appeals in the Commission, the number would be over a lakh.

various Registries and the Secretariat's offices – on top of cupboards, under tables, along the walls on the floors.¹²² For instance, due to lack of space, files of Mr. M.L. Sharma's Registry are being stored in Mr. M.L. Sharma's own office room. Management of all these records is becoming very difficult as they cannot be kept in a proper sequence due to lack of space. A lot of time is spent locating a file when correspondence is received in relation to it.

This problem is aggravated by the reallocation of Ministries and Departments or on retirement of Commissioners as all the files and papers have to be moved to a different Registry.¹²³ During this process, it takes a while for the new Registry to take stock of all the incoming files and papers and to store them in an organized manner and then start taking appropriate action on them.

On 22 February 2011, more than five years after it came into existence, the Commission adopted a Record Retention Schedule. According to this Schedule, all quasi-judicial records of the CIC are to be retained for a period of six months from the date of the final disposal of the case. However, no records are to be destroyed if any proceedings arising from the final order are still pending either in the CIC or any other competent forum such as a Court where the Commission's order may have been challenged. For the administrative/ financial records, the CIC has adopted the Record Retention Schedule for Records Common to All Department read along with the Central Secretariat Manual of Office Procedure. Registries have only recently started identifying files which can be destroyed.

Section 4(1)(a) of RTI Act places a duty on every public authority to maintain its records 'duly catalogued and indexed in a manner and the form which facilitates the right to information' under the Act. The CIC as a public authority is also bound by this duty. Section 4(1)(a) also provides that subject to availability of resources, records should be computerized and be made available through a network – so that access to such record is facilitated.

The process of scanning all the records of the CIC is already underway with Mr. S. Gandhi's office leading the way. But to ensure

¹²²*The only exception to this situation is Mr. Gandhi's office. As this Registry has been digitized, all files are scanned and almost no physical files are maintained here (except for few general administration files). However, it may be noted that the physical files have not been destroyed as yet. After scanning all the files and papers are stored in a general storage hall till further orders.*

¹²³*In the last quarter of 2010, three Commissioners retired and reallocation of files took some time.*

that physical records, till they are destroyed as per the Records Retention Schedule, are kept in a form that facilitates the right to information, it is suggested that the CIC establishes a well-managed Record Room where case files are sent once the case has been decided.¹²⁴ This Record Room would have at least two people – one person of the post of Section Officer (or higher) and one peon. All files would be indexed and catalogued properly and would be easily traceable.

The Staff Inspection Unit in its Report has highlighted the need to have a record room in an office such as the Commission which discharges quasi-judicial functions.¹²⁵ The Unit had observed that a 'large volume of old files/records of the registries are lying on floor for want of space'. It was recommended by the Unit that a Departmental Records office should be established with one trained Departmental Records Officer/Section Officer.¹²⁶

Along with ensuring compliance with CIC's obligation under Section 4(1)(a), the Record Room would be useful because–

- ❖ The offices of Information Commissioners receive several RTI Applications which request copies of documents pertaining to a certain file or inspection of files. Response to these RTI Applications is based on the records available on that particular file. A lot of time is spent by Deputy Registrars and staff in each office in first locating such a file and then preparing a response to it. A dedicated Section Officer in the Record Room will be well placed to deal with such RTI Applications in an efficient manner.
- ❖ Whenever a request is made for inspection of files, the RTI Applicant can come to the Record Room and inspect the files instead of going to a Registry. This would be more convenient for the RTI Applicant as well, particularly if the files she wants to refer to pertain to different Registries.
- ❖ As the records will be maintained in one common place, no physical transfer of files which have been disposed of would be required when a Ministry/ Department is reallocated to another office. This would reduce the confusion that is created during

¹²⁴*Instead of shifting all the files once the case is decided, they can be shifted within a month from the date by which the Commissioner had directed compliance of the order. This would give appellants enough to file complaints against non-compliance of CIC's order, if any.*

¹²⁵*See supra n.23 at 16.*

¹²⁶*Ibid at 18.*

such a redistribution of work considerably and the office receiving the files can concentrate on files which are yet to be disposed of and the papers which are yet to be dealt with.

- ❖ The Section Officer would be the point person to ensure that all records of the Commission are scanned and maintained properly in a soft copy format. The database of records created can eventually be made available on intranet to the whole CIC. This would save time in case a file needs to be located. It would no longer be necessary to physically locate a file and take it to the concerned official who might be sitting in a different building.
- ❖ The Section Officer in the Record Room would be responsible for identifying files which need not be maintained any longer. For this reason, he can follow up with the Legal Cell or the concerned Registry if there is any pending action on a particular file.

Receipt Section

The function of the Receipt Section of the CIC has been discussed above. From 2008-2010 the total correspondence in the form of letters received by the CIC (not including faxes and emails) is given in Table 9.

Table 9: Total Number of correspondence (dak) received by the CIC from 2008-2010

Year	Total <i>dak</i> received*
2008	55875
2009	78585
2010	96429

**includes personal dak*

It is clear from this data that the number of *dak* received per year is going up, although the rate of increase is going down. Taking the 2010 as a baseline, the average number of *dak* received per week by the Commission is a little more than 2000.

As it is the starting point of most work in the CIC, this Section's efficiency affects the working of the whole CIC. Currently, it is facing a backlog of work. The effect of this has not been felt fully as yet, because the offices of the CIC are facing backlog in their own work. But once they become more efficient, the Receipt Section's work would necessarily have to be brought up to speed.

Given the 2010 numbers, the Section has to handle at least 400 *dak* a day so that there is no backlog. But with its current staff strength it is able to manage only around 300 a day. The staff of the Section is also involved in responding to queries by citizens over phone or in person and receiving and checking *dak* submitted by hand. This takes up a substantial amount of their time as 30-35 persons visit the Section everyday and while there is no record of the number of phone calls received it is quite a high number.

If the experience of past three years is any indication, the work of the Section is only going to increase. The Section needs at least two more people to handle the *dak*. Also, its public dealing functions should be reduced so that it can concentrate on its main function.

Variation in Work Output

Although offices of Information Commissioners are similarly staffed in terms of numbers, the output of these offices and the speed with which they are handling their tasks are different. For instance, the Registries of Mrs. A. Dixit and Mr. S. Gandhi deal with *dak* within one to two days of receiving them (on an average). Other offices often take months before handling a *dak*. Another example would be that while some offices take action on complaints of non-compliance of CIC's orders, others leave such complaints aside. Due to this disparity in the functioning of offices and the manner in which work is allocated in the CIC – i.e. Ministry/ Department-wise, it is a matter of luck, when a person's communication to the CIC will be looked at and when any action will be taken. This situation is further aggravated when a Commissioner retires and/or a Ministry or Department is re-allocated to a new Information Commissioner, as all the *dak* and files relating to the Ministry or Department get accumulated till the new officer takes charge and starts taking action.

While, the disposal of cases depends majorly on the each Information Commissioner's style of functioning, there is no reason why all other Registry-related work in the CIC should move at such different paces.

It is proposed that if a common Registry is established in the CIC it would address at least part of this problem. The common Registry would deal with all correspondence including new cases filed with the CIC. It would not take action on correspondence relating to cases which have already been registered by the CIC.¹²⁷ These would be

¹²⁷*Such as copies of written submissions, complaints of non-compliance, letters withdrawing an appeal, etc.*

dealt with by the concerned Information Commissioner's office. It is further proposed that the existing Receipt section be merged with the common Registry. The main tasks of this Registry would be to—

- Respond to public enquiries¹²⁸
- Receive all *dak* in the Commission and scrutinize its contents¹²⁹
- Open the *dak* and get the documents scanned
- The scanned documents would then be sorted into different categories –
 1. New appeals and complaints;
 2. Correspondence relating to already registered cases;
 3. RTI Applications/Appeals to the Commission;
 4. General queries/miscellaneous.
- Category 1 would be scrutinized and the new cases will be registered and forwarded to the concerned Information Commissioner¹³⁰
- Correspondence relating to Category 2 would be sent to the concerned office.
- Category 3 *dak* would be sent to the RTI Cell
- Category 4 *dak* would have to be dealt with/responded to appropriately by the Registry itself. For instance, if a citizen is asking for guidance relating to some aspect of the RTI Act, an appropriate reply would have to be prepared, with the assistance of the Legal Cell if necessary. If there are certain queries which are received often, standard format replies will be prepared.

¹²⁸Discussed in the next section.

¹²⁹Except personal correspondence which would be sent directly to the Information Commissioner or concerned official.

¹³⁰The staff of the Registry will all consider the following –

- Does the Central Information Commission have jurisdiction over the matter (and the matter does not pertain to the State Information Commission)?
- Are all the documents in English or Hindi?
- Is it an Appeal or a complaint?
- Is the Appeal time barred or is there sufficient reason to condone delay?
- Have all the necessary documents been submitted?
- Registration of the case
- File (either physically or in soft copy) sent to the concerned Registry

Letters which are only copied to the Commission for information can be kept separately after making a record. Section 25 related correspondence will be sent to the concerned official in the CIC.

The benefit of having a common Registry is primarily to remove the 'differential' procedural treatment of cases/ correspondence which is presently occurring based on the Registry which is dealing with them. All fresh cases received on the same date by the CIC would be registered around the same date. Action would be taken on correspondence (other than those relating to compliance of CIC's orders) in a similar time frame, notwithstanding the concerned public authority.

It was noticed during the interviews and visits to the CIC, that in most offices, a bottleneck is created at the Deputy Registrar level, as he is expected to over-see and coordinate variety of tasks—registration of cases, compliance of orders, scheduling of cases, administration of the office and correspondence with the CIC's Secretariat, responding to RTI Applications, preparing and signing notices/ letters/responses, etc. Due to this bottleneck, understandably, the work in each office moves at the pace set by a single person. If part of the burden is taken away from each office, it will allow them and particularly the Deputy Registrar to concentrate on other tasks which are necessarily more office-specific – such as compliance related issues and administration of the office. It will also perhaps allow time for one or two staff members in each office to assist the Information Commissioner in monitoring compliance of Section 4 provisions by public authorities.

The reason for suggesting that the Receipt Section should be merged with the Registry is that the tasks performed by the Receipt Section are quite often duplicated by individual offices. The Receipt Section inputs basic data of every correspondence received by the CIC such as name and address of sender, date on which the correspondence has been received, and the concerned public authority. A unique diary number is then auto-generated by the system. When the individual Commissioner's office starts work on any correspondence received by it, it will input all this information once more along with additional information such as the address of the PIO and the relevant dates. To remove this duplication of efforts, people can be trained to deal with routine *dak* from 'start to end'.

Public dealing

Presently the CIC has no information desk/reception counter. One or two persons in each Commission spend a significant amount of time attending to telephone calls and queries from persons visiting the Commission. Even the Receipt Section deals with a lot of enquiries. The recently set up call centre can only provide information which is currently available with the Central Receipt Section, i.e. when the dak has been received and processed, the diary number given to it and name of the Commissioner/person to whom it has been forwarded. On the other hand, people often find it difficult to get basic information about their case or any communication they might have sent to the CIC because they are unable to get the concerned official on the telephone.¹³¹

If a single information desk is established, a lot of the queries can be responded to by the person/s sitting at that desk. These people can also be part of the common Registry, as proposed in the previous section. They would have access to the databases created by the common Registry and individual offices and would be able to respond to queries such as what action has been taken on any correspondence sent to the CIC and what is the status of a case.¹³² They would also be able to assist persons with information on procedural requirements for filing an appeal, complaint or RTI Application and provide people with contact information of relevant officials in the CIC. This kind of centralized public dealing would not only be helpful in reducing the workload of individual offices which spend time to respond to many of these queries, but also be more citizen-friendly and citizens do not have to worry about getting the concerned official on the telephone.

Space

Operating an institution from three different locations is not an ideal situation. Firstly, it greatly inconveniences citizens as well as public officials who are not aware of the exact location of the office they need to visit. For instance, while the Secretariat is situated in the August Kranti Bhawan rooms of the CIC, the officials seated there

¹³¹*It has to be mentioned here that during visits to the offices of the CIC, it was observed that staff members attended to every phone call. In that sense, perhaps, CIC is doing better than many other government offices.*

¹³²*They would be able to say when the case was registered, whether any notice had been issued, when, if any, hearing was listed, whether the case was returned due to insufficient documents etc.*

will generally not receive applications/ letters/ communications in person.¹³³ Secondly, although offices of each Information Commissioner operate independently, there are times when files have to be physically taken from one office to the other. Also, as the Receipt Section is situated in a separate building, bags full of letters have to be taken to the two other buildings.¹³⁴ Thirdly, given the separation of offices, interaction between the staff of the Commission is very limited. Information Commissioners interact during their bi-weekly meetings or informally (over lunch/tea) with the Commissioners seated in the same building. But the rest of the staff does not meet or get an opportunity to discuss issues which would be of common interest to them. Fourthly, as stated by Mr. S. Misra, Chief Information Commissioner during an interview, the perception of the 'Central Information Commission' as an important institution with great responsibilities is somewhat shadowed when one thinks of it not as one building, but a bunch of office rooms.

Besides the problems due to separate office space, during interviews, at least three Commissioners stated that the shortage of office space and storage area was one of the problems they are facing. As has been noted earlier, most offices have files and papers stacked wherever there is some empty space—on the floor, on top of cupboards, below tables.¹³⁵

Although money has been allocated for construction of a new building for the CIC, suitable land has not been identified till date.¹³⁶ It has been suggested by the Minister of State, Ministry of Personnel, Public Grievances and Pensions that the buildings presently being occupied by the Central Bureau of Investigation in the CGO Complex,

¹³³Even if they do receive any correspondence, they are not in a position to give a unique diary number to it which would enable the sender to follow up. Only the Receipt Section can give a unique diary number to a correspondence.

¹³⁴Since the offices at the August Kranti Bhawan are situated at some distance, the staff of the CIC has to wait till a vehicle can be made available to take the bag(s) from the Receipt Section.

¹³⁵The only Commissioner's office which did not seem to have the problem of space is that of Mr. S. Gandhi. As this office is completely digitalized, very few physical files are created in this office and therefore there is no problem with regard to storage.

¹³⁶Information received under the RTI Act reveals that a proposal has been made to allot a piece of land near the JNU Campus in Delhi for the construction of a new building, but because of its distance from Central Delhi where most government offices are situated, it is not ideal. Letter dated 08.03.2011 of the Minister for State, Ministry of Personnel, Public Grievances and Pensions to the Minister for Urban Development.

on vacation, are allotted to the CIC.¹³⁷ But no decision has been taken on this matter by the Ministry of Urban Development on this.

Meanwhile, to meet the space crunch, the CIC has been trying to get more rooms for itself in the August Kranti Bhawan. HUDCO, the company which leases space in August Kranti Bhawan offered four more rooms in the Bhawan in December 2010 but at a rate much higher than that which is being paid for the existing rooms. CIC has for months been trying to renegotiate the rent amount, but HUDCO has refused. As there is no additional rental space available in close proximity, the CIC has requested the DoPT to approve the higher rental.¹³⁸

The DoPT meanwhile has been of the opinion that paying differential rents for rooms in the same premises is undesirable¹³⁹ and that the space available currently is sufficient and in accordance with spacing norms.¹⁴⁰

The Chief Information Commissioner in a strongly worded letter to the Secretary, DoPT, regarding hiring of additional space, has written that the 'circumstances in which we [CIC] are placed, this is, to say the least, obnoxious'.¹⁴¹ He has quoted examples of the Competition Commission and the Consumer Grievances Appellate tribunal which have hired much more costly office space.

Decision is yet to be taken on the matter. But it is indeed a very unfortunate situation. The DoPT's view that sufficient space is available is based on a calculation which includes an austerity cut of almost 2000 sq. ft. and an underestimation of total number of files leading to an entitlement estimate of 1600 sq.ft. for a record room.¹⁴² The number of files is more than double and therefore for additional space of 1600 sq.ft. could be justified under that head.

If the CIC is to be a truly an independent body, the least the government can do is to trust the CIC's estimation for how much space is required to function properly.

¹³⁷Letter dated 08.03.2011 and 08.06.2011 of the Minister for State, Ministry of Personnel, Public Grievances and Pensions to the Minister for Urban Development.

¹³⁸Office Memorandum dated 21.04.2011 issued by Additional Secretary, CIC to the Joint Secretary (AT&T), DoPT.

¹³⁹File noting dated 04.04.2011 by Joint Secretary (AT&A), DoPT.

¹⁴⁰File noting dated 02.05.2011 of Deputy Secretary (IR), DoPT.

¹⁴¹Letter dated 06.06.2011 to Secretary, DoPT.

¹⁴²on Space Requirement of CIC; available on DoPT's file.

Autonomy

When a law on the right to information was being considered, the need for an independent body to exercise appellate functions was repeatedly emphasised on. The Parliamentary Standing Committee in its report stated that the independence and autonomy of the CIC must not be curbed in anyway. However, the RTI Act does not contain any provision to ensure this independence and autonomy. The limited independence that the Chief Information Commissioner enjoys is with regard to the superintendence and management of the CIC¹⁴³ which include making regulation for internal management affairs.¹⁴⁴ The Central Government, i.e. the DoPT retains the management of the finance and accounts of the CIC.¹⁴⁵

The CIC has been, for some years now, requesting the Government to give it the status of a Grants-in-Aid organisation. In December 2009, Mr. Wajahat Habibullah, former Chief Information Commissioner, had written to the Prime Minister about this and drawn comparisons with the National Human Rights Commission (NHRC)—

‘lack of similar financial autonomy has severely curtailed the flexibility in the handling of its finances by the Central Information Commission. This, in turn, inevitably reflects on the efficient conduct of the affairs of the Commission. It would, therefore, be in the fitness of things if the budgetary allocation to the CIC are also made on grant-in-aid basis.’¹⁴⁶

The National Human Rights Act 1993 has a specific provision to treat the NHRC as a Grants-in-Aid institution. The RTI Act does not have a similar provision. As the creation of an autonomous institution since 2005 requires Cabinet approval, the CIC prepared a Draft Cabinet Note justifying the need for financial autonomy. Conversion into a Grants-in-Aid institution, it was estimated, would involve recurring expenditure of around 36 lakh rupees.

Perusal of the files notings in the DoPT’s file on this issue reveals that the DoPT had agreed to the CIC’s proposal for conversion to a Grants-in-Aid institution. But it was subsequently advised against it by the Special Secretary and Financial Advisor on the grounds that the conversion would not serve ‘any useful purpose and being part

¹⁴³Section 12(4), RTI Act.

¹⁴⁴*Delhi Development Authority v. CIC & Anr.*, WP (C) 12714/2009, judgment dated 21.05.2010.

¹⁴⁵No.1 (23/E.(II)(A)/2005/dated 16.02.2006.

¹⁴⁶Letter dated 01.12.2009.

of the Ministry's budget would be advantageous'.¹⁴⁷ He has also referred to problems faced by the NHRC because of its Grants-in-Aid status. The views of the CIC were sought on his opinion.¹⁴⁸

There are obviously definite implications if the CIC is given the kind of financial autonomy it has sought. If the NHRC is facing problems regarding release of funds, it would be a serious issue for the CIC to consider. But what is significant is that throughout the process of consideration of the proposal to enhance financial autonomy, not once has an argument made, at least in the papers available in the DoPT's file, that by the very nature of its functions, the CIC is different from other statutory organisations like National Disaster Management Authority (NDMA), the Insurance Regulatory and Development Authority (IRDA), Telecom Regulatory Authority of India (TRAI), National Commission for Women (NCW), etc. For the CIC as an adjudicator in cases where one party is necessarily a public authority, autonomy and independence define its very purpose. If the CIC has to ensure proper implementation of the Act and promote transparency and accountability in the government, it cannot be constrained by reasons of lack of autonomy from one such government body.

Staff

One of the major problems being faced by the CIC relates to its staff – it is inadequate in numbers as well as in quality. The CIC does not have the power to create posts. Till the DoPT approves any additional posts, the CIC has to rely on outsourced staff and justify additional expenditure to the DoPT. In the last five years, the DoPT has enhanced the staff strength of the CIC on at least three occasions. The most recent order was in April 2011 which came after two years of 'negotiations' between the CIC and DoPT.

In earlier sections, the need for more staff in particular offices of the CIC has been discussed. For instance it has been suggested that each Commissioner should be assisted by two judicial clerks and two people can prepare case summaries. Coping with *dak* presents another instructive example of the shortfall in staff numbers. The Staff Inspection Unit in its report submitted in 2010 had estimated that based on an average workload of 7000-9000 'receipts' per annum in each Commissioner's office, 2 Data Entry Operators (DEOs) are

¹⁴⁷File Noting dated 06.05.2011.

¹⁴⁸Letter of the Deputy Secretary, DoPT dated 29.06.2011 to Secretary, CIC.

adequate. But if the numbers for 2010 are anything to go by, the *dak* received by each Commissioner's office (86895) would be upwards of 14000. This means each Commissioner's office should have at least 4 DEOs looking exclusively at the receipts.

It is not only the numbers but the skills that the staff brings to the CIC which is of concern. Currently the staff provided to the Commissioners mainly consists of Data Entry Operators (DEOs) who have been hired through a contractor. The only qualification that is laid down by the CIC to the contractor is that the persons he recruits for the CIC should be able to use the computer. Other than that no other eligibility criteria are given. Most of the DEOs working at the Commission are not fluent in English. Therefore, their tasks are mainly procedural and routine work.¹⁴⁹ While they can read the correspondence sent to the CIC and can, to some extent, identify the main issue, but mostly they are not qualified enough to apply their mind to the issue. They will therefore be unable to brief the Commissioner or the Deputy Registrar about a case or a submission, make a file noting, and/or draft.

The quality of existing staff can be improved significantly by providing some form of training. Presently, there is no official training for DEOs as they are temporary appointments. In such a scenario, informal orientation or training sessions could be held with the staff not only to explain their work and what is expected from them, but also to give them a basic understanding of the RTI Act itself.

Another measure that can be taken to mitigate staff-related deficiencies is to organise meetings within offices as well as with other offices. Problems faced by different offices in the CIC are often quite similar, but because of the lack of discussion between offices, each of them tries to find solutions independently and invent the wheel, as it may. Discussion between peers can lead to sharing of ideas which can save a lot of time for the CIC. Meetings within offices are helpful for various reasons – problems faced by the staff can be discussed, ideas thrown around, clarifications sought and more significantly a sense of involvement in the working of an important statutory body can be inculcated.

A motivated staff is far more efficient and therefore the CIC would certainly benefit by taking steps to ensure that. Small things can make a big difference. For instance, a good airy workspace, clean

¹⁴⁹Such as registering of cases, recording the correspondence coming to the Registry, typing and printing notices for hearings and other letters for correspondence, etc.

toilets, a small canteen or coffee/tea point, or library, small snack parties to celebrate festivals or occasions where all members of the staff are involved – all or any of these would go a long way in making the CIC a nicer place to work for the staff.

Use of Information and Communication Technology

The CIC has to increasingly turn to Information and Communication Technology (ICT) solutions in relation to its problems. Fortunately, there is already a healthy trend in this direction. Many of the offices are now using some computer-based programs to generate standard notices from a common database. As mentioned earlier, hearings are commonly held through audio/ video conferencing. Urgent written submissions/correspondence sent over fax or e-mail are considered. Interestingly, two Information Commissioners dictate most of their orders over a speech recognition software, which saves the time of a stenographer who is able to assist the office in other ways. Mr. S. Gandhi's office has gone paperless and works through an intranet based software on which all files have been uploaded and new files are being constantly uploaded.

It is suggested that that to work more efficiently, all computers in each Commissioner's office should be connected through an intranet to ensure convenient data sharing.¹⁵⁰ Secondly, the CIC should upload all its orders regularly and very soon after they are delivered. Presently, many of the orders are uploaded but they are some which are not. Moreover, the search engine of the CIC's website should be more convenient. It would be useful for the Information Commissioners and their judicial clerks to keep track of orders given by other Information Commissioners on the similar issues.

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The aim of this Part of the Report was to analyse an array of issues and concerns relating to the functioning of the CIC and to propose possible approaches to the address those issues. It must be admitted that the enumeration of issues is not exhaustive and there are certainly other factors which are relevant to the CIC's functioning. Nonetheless, the hope is that the most critical factors affecting the functioning of the CIC have been addressed.

The next and final part of the Report summarises the findings of the research project and also suggests guiding principles for the way forward.

¹⁵⁰ Currently, only Mr. S. Gandhi's office is connected through intranet.

A Staff Survey

A short survey was conducted to obtain information and views of staff members in the CIC on their experience while working there. 15 persons, randomly selected, from the offices of four Commissioners and the Secretariat were requested to fill out a short questionnaire. Some of the significant findings of the survey are-

- When asked whether they are aware of the basic provisions of the RTI Act, 60% of the respondents said they did, while the rest (40%) said they did not.
- 87% of the respondents are aware of the powers and functions of the CIC.
- Of the 15 respondents, 11, i.e. 73%, were of the opinion that the CIC was having some impact on the Government.
- The respondents were asked about what they thought were the reasons for pendency of cases increasing in the CIC. Their responses were –



III

SUMMARY OF FINDINGS AND WAY FORWARD

SUMMARY OF FINDINGS

The first Part of this Report traces, briefly, the history of the framing and coming into force of the RTI Act. It discusses the various Bills and recommendations made before the passage of the final law with the aim of identifying the nature and characteristics of the appellate and review mechanisms which were proposed over the years. The findings reveal that there was a constant demand for an independent and autonomous body, which would decide cases in a stipulated time frame and would have powers to penalise. The Report then proceeds to give an overview of the RTI Act and discusses in detail the provisions relating to the CIC. The description of the CIC's functions, powers, structure and current functioning lays down the context for the analysis in the second Part of the Report.

The second part of the Report divides issues relating to the functioning of the CIC into two categories – the first relates to the *quasi-judicial* functions of the CIC and the second relates to the administration of the CIC. The summary of findings is as follows-

- **Issues relating to the quasi-judicial functions of the CIC**
- ❖ A comparison of different forecasts for the number of cases that may be registered with the CIC in 2011– 15 with the current minimum disposal norm of 3,200 cases per Commissioner per year reveals a dismal picture. The CIC has to set a more ambitious target for itself, with Commissioners disposing between 4000-5000 cases per year. Three ways in which the Commissioners can dispose of more cases are – to hold at least 320 hearings in a month; decide more cases on the basis of written submissions; and give common orders in cases with similar facts and grounds of appeal.
- ❖ The legal assistance available to the Information Commissioners has to be enhanced. It is suggested that two judicial clerks are appointed for every Information Commissioner. They will brief the Commissioners on cases, undertake research, and provide legal opinion on matters as required by the Commissioners.

- ❖ There is a need to improve the quality of orders passed by the CIC. Currently, many of the orders passed by the CIC are cryptic and do not provide even basic information about the case. This affects the precedence value of these orders. As a young institution set up under a relatively recent and path-breaking legislation, the CIC has to establish itself as an independent, effective and credible *quasi*-judicial body. Its orders have to be sufficiently well-informed and reasoned to ensure that its effectiveness and decision-making ability are not questioned.
 - ❖ The non-appointment of new Information Commissioners is seriously affecting the current performance of the CIC.
 - ❖ The CIC has to ensure compliance with its orders. Non-compliance not only causes injustice to the individual appellant, but is also reflective of a contemptuous attitude to the institution itself, and to the core values underlying the RTI Act. If appellants are given the impression that the CIC is not serious about its own orders, it would erode any degree of authority and credibility that the CIC may have established over the past five years. Additional staff appointments would allow Deputy Registrars to spend more time on compliance-related work. The deterrent effect of penalties under Section 20 of the Act cannot be discounted.
- **Issues relating to the administration of the CIC**
- ❖ Record management practices in the CIC need considerable improvement. It would save significant amounts of time if files and records could be easily located. Furthermore, as a public authority, the CIC has to meet its obligations under Section 4(1)(a) of the Act. It is suggested that a properly catalogued and organised Record Room with sufficient staff should be established.
 - ❖ The Receipt Section will eventually set the pace for the CIC. Therefore, it has to be ensured that no backlog is created in this Section. Given the trend in the number of *dak* received, the staff in this Section needs to be increased.
 - ❖ Although offices of Information Commissioners are similarly staffed in terms of numbers, the output of these offices and the speed with which they are handling their tasks, are different. To reduce 'differential' treatment of *dak* by the CIC, it is suggested

that a common Registry be constituted which will handle all *dak* except those which relate to registered cases.

- ❖ To streamline public interaction, it is necessary to have a dedicated information desk in the CIC with well-trained staff who have access to the different databases maintained by the CIC. This would reduce some of the workload of the Receipt Section and the offices of the Information Commissioners.
- ❖ Operating from three different locations is not an ideal situation for any institution, and it is important that the Government makes serious efforts to look for an alternative office building for the CIC. Furthermore, the CIC desperately needs more space to function, as its workload is increasing over the years.
- ❖ The CIC has limited financial autonomy. There are contrary views on whether a Grants-in-Aid organisation status would allow the CIC to function more efficiently. This issue has been under consideration for over two years now. It appears that what has not been considered is that the CIC, given its role of an adjudicator in cases where a public authority is a necessary party, cannot afford lack of autonomy and independence.
- ❖ One of the major problems being faced by the CIC relates to its staff – it is inadequate in numbers as well as in quality. Besides increasing the staff strength, the CIC also needs to initiate measures to train the existing staff, to hold office meetings to understand staff-related issues, and to motivate the staff to work more efficiently.
- ❖ There is a healthy trend in the CIC with regard to the adoption of technological solutions to problems, and this should be further encouraged. The search engine of the CIC's website should be made more user-friendly.

THE WAY FORWARD

Institutional analyses of statutory or constitutional bodies, particularly those which are judicial or *quasi*-judicial in nature, are not undertaken very often in India. Whenever there is debate about how well such a body is performing, this is generally measured in terms of pendency of cases (or how long a case takes to come up before that body). Even in case of the CIC, those would be the headline concerns. But

what makes pendency undesirable is not only the denial of 'timely justice' which is a short-term impact.

In the long run, pendency creates a medium through which officials can exercise discretion which would otherwise not exist.¹⁵¹ While presently cases are heard, more or less, on a first-registered-first-heard basis, mounting pendency of cases may give way to a system where appellants have to resort to various means of seeking to have their matters pushed up the list. There is already a trend towards this in the case of complaints filed for non-compliance with the CIC's orders. As noted earlier, many of these are not considered due to the lack of time, and inadequate staff. However, if some appellant persists through phone calls and personal visits to the CIC, the complaint may have a higher chance of being considered. With growing demands on time, the staff of the CIC would be compelled to prioritise cases, and in the absence of any reasonable guidelines, they might (knowingly or unknowingly) resort to discretionary tactics.

There are various ways in which the increasing caseload and related problems can be handled. Many of these have been discussed above – some easier to adopt than the others. Whatever the CIC's (and DoPT's) approach may be, it will be important to keep four things in mind –

First, the spirit of the Act and the status that the CIC enjoys in law. The CIC is the creation of a beneficial legislation which has been drafted to make the government and its actions more transparent and accessible to the citizenry. Therefore, it must necessarily function in a way that is people-friendly and pro-transparency. From regularly interacting with the public outside an ad judicatory set-up,¹⁵² to actively promoting compliance of Section 4 obligations, to arranging for comfortable waiting rooms and water coolers for visitors – the CIC has ensure that it is itself accessible and open to productive public engagement.

Secondly, while the aims of the RTI Act and the 'job profile' of the CIC are, normatively speaking, of great importance to our constitutional ideals, it would be incorrect to assume therefore that each discrete action/adjudication undertaken by the CIC is of the

¹⁵¹*Point of discussion during interview with Dr. Pratap Bhanu Mehta, President, Centre for Policy Research.*

¹⁵²*Point of discussion during interview with Mr. Nikhil Dey.*

same significance. A lot of the work is of a routine, even mechanical, nature and not much is lost, relatively, if such tasks are carried out through a standardized or summary procedure.

Thirdly, the CIC must set for itself certain transparent performance appraisal criteria, and then make *bona fide* efforts to meet these criteria. In a seminal book on public institutions it has been observed:

“assessing the performance of public institutions requires clear yardsticks and criteria. Indeed, one measure of the performance of any institution is whether it has developed any criteria to assess its own performance. We can then ask both how well the institution has performed with respect to its performance yardsticks and whether these yardsticks are appropriate in the first place. A striking aspect of India’s public institutions is the paucity of transparent performance criteria by which gauge their performance”.¹⁵³

The CIC has set a minimum disposal norm for itself – a type of performance appraisal criterion. But, as discussed earlier, the norm is not ambitious enough. In addition, quite apart from a minimum disposal norm, the CIC should perhaps consider other mechanisms and criteria for self-appraisal. The CIC knows its functions, powers and capabilities on the one hand, and the expectations of the public on the other. If it sets appropriate criteria for itself (given the constraints) and succeeds in performing well by these criteria, then the CIC at least cannot be accused of any shortcoming.

Finally, the CIC has to internalise the unique nature of its powers and functions. There is no legal compulsion or sound policy rationale for it to follow the governmental rules of procedure with respect to its internal functioning, if it feels it can usefully improvise.¹⁵⁴ The Act gives the Chief Information Commissioner the power to manage the internal affairs of the CIC. They are not bound to do things the conventional *sarkari* way.

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¹⁵³See ‘Introduction’ in *PUBLIC INSTITUTIONS IN INDIA: PERFORMANCE AND DESIGN* *supra* n.24 at 13.

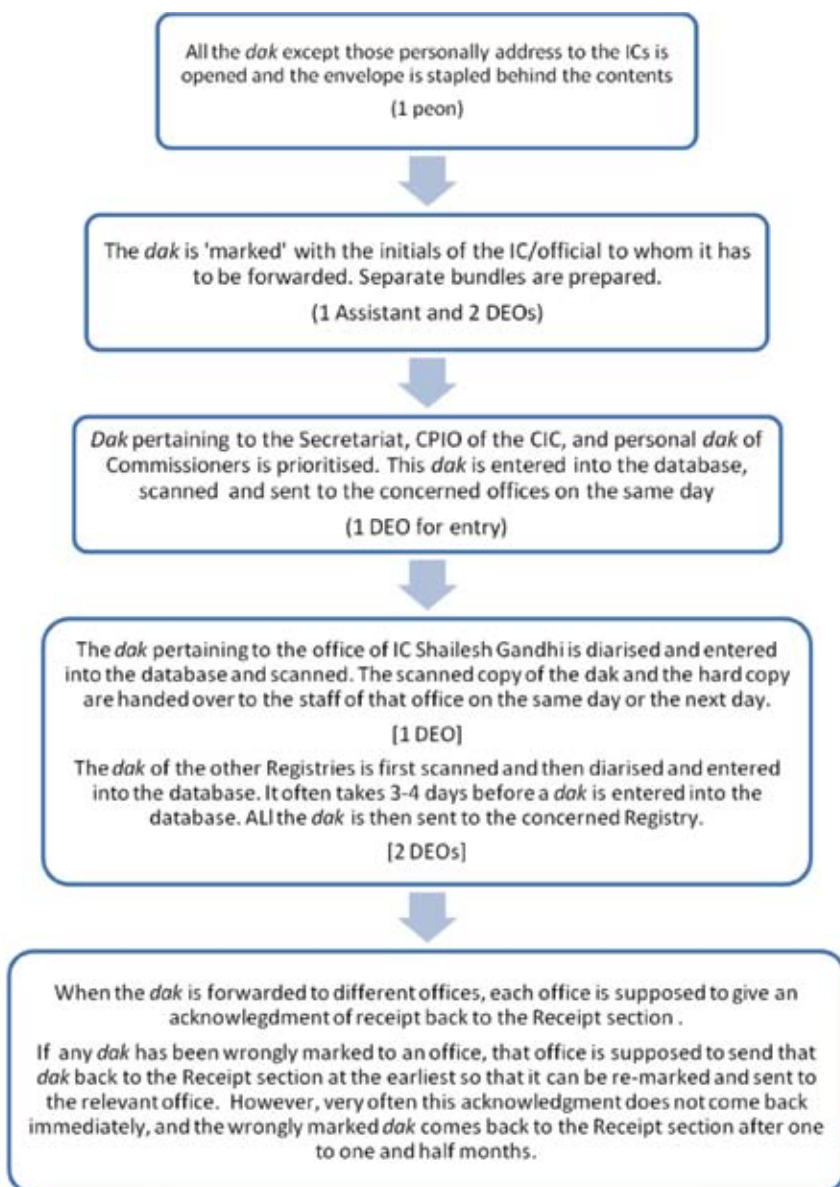
¹⁵⁴Point of discussion during interview with Mr. Rajeeve Kapoor, Joint Secretary (AT&T), DoPT and Ms. Anuradha Chagti, Deputy Secretary, DoPT.

A final word may be in order, by way of conclusion. By its very nature, this project has been critical in its approach. The objective has been to identify shortcomings and deficiencies in the functioning of the CIC, with the aim of enhancing its capabilities and efficacy. Nonetheless, the broader picture should not be lost sight of. The RTI Act 2005 and, with it, the CIC, have had a radical, even transformative, impact on our quest for fulfilment of our core democratic and constitutional aspirations. For this reason, even as it strives to improve in the future, the CIC can legitimately take great pride in what it has already accomplished thus far.

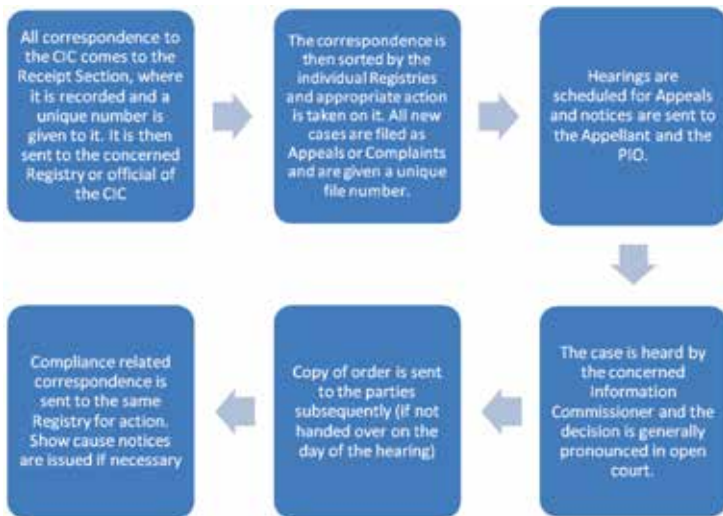
Appendix I – List of Interviewees

- Mr. Satyanand Misra, Chief Information Commissioner
- Mr. Shailesh Gandhi, Information Commissioner
- Mrs. Annapurna Dixit, Information Commissioner
- Mr. M.L.Sharma, Information Commissioner
- Mrs. Deepak Sandhu, Information Commissioner
- Mrs. Sushma Singh, Information Commissioner
- Mr. B.B. Srivastav, Secretary, CIC
- Mr. Aakashdeep Chakravarthi, JS (Law), CIC
- Mr. Tarun Kumar, JS (A&P), CIC
- Mr. Pankaj Shreyakar, DS, CIC
- Mr. G. Subramanian, Mr. Sunil and Mr. Surender (office of Mrs. Annapurna Dixit, Information Commissioner)
- Mr. M.G. Vinod and Mr. V. Bhalla (office of Mr. Satyanand Misra)
- Mr. Mohapatra and Mr. Gulati (office of Mrs. Deepak Sandhu)
- Mr. Padmanabha (office of Mrs. Sushma Singh)
- Mr. Dhirendra Kumar and Mr. Ritam Agarwal (office of Mr. Shailesh Gandhi)
- Mr. Rajeev Kapoor, JS, DoPT
- Mrs. Anuradha Chagti, DS, DoPT
- Mr. Shekhar Singh, NCPRI
- Dr. Pratap Bhanu Mehta, Centre for Policy Research
- Mr. Venkatesh Nayak, Commonwealth Human Rights Initiative
- Mr. Nikhil Dey, NCPRI
- Staff of the Receipt Section

Appendix II – Basic work-flow in the Receipt Section



Appendix III – Basic work-flow in a Commissioner’s office in relation to cases



Appendix IV – Detailed information on the file notings relating to the appointment of new Information Commissioners

As early as July 2010, officials in the DoPT had acknowledged the fact that the ‘selection of CIC & IC takes a considerable amount of time. it would be advisable to move a proposal to fill up the three vacancies... well in time’.¹⁵⁵

On 3 August 2010, a list of thirty three applications/proposals was prepared.¹⁵⁶

On 6 August 2010, a noting recording that several representations had been received by the DoPT alleging that the method of selection of Information Commissioners was arbitrary and there should be transparency in the procedure. A proposal was prepared for the selection process.¹⁵⁷

In this proposal it is first accepted that there is merit in the suggestion that the current process of selection of Information Commissioners should be more consultative to be able to select candidates who have richer experience and the composition of the CIC would become more broad-based.

¹⁵⁵File noting dated 29 July 2010 by the Secretary (P).

¹⁵⁶File Noting dated 03.08.2010 by Section Officer.

¹⁵⁷File Noting dated 06.08.2010 by Director and 09.08.2010 by Joint Secretary (AT&A).

After discussing various international practices, it is suggested that a Committee is constituted¹⁵⁸ to prepare a short list of candidates and this process would be widely publicized. The shortlist would be publicized and objections would be invited. The same would be forwarded to the Committee headed by the Prime Minister to make the final recommendation to the President.

It is reiterated to the Secretary (P) that a decision should be taken on adopting a more transparent at the earliest as three posts would fall vacant by December 2010.¹⁵⁹

The Secretary (P) in a note to the Minister of State (P) forwarded the proposal and emphasised that an urgent decision needs to be taken regarding the identification of suitable candidates.¹⁶⁰

In September 2010, all file notings focus on the more immediate concern – who will be the next Chief Information Commissioner on retirement of Mr. Wajahat Habibullah. However, a noting by the Secretary mentions that it is too late to start the process of deciding a new selection procedure. He states if consultations are started immediately, it would be possible to fill up the three vacancies from the current Information Commissioners (for the Chief's post); applications already received and the names identified by the Selection Committee headed by the Prime Minister.¹⁶¹ The Minister states a note should be sent to the Prime Minister's Office.¹⁶²

In December 2010, once again a noting is made for consideration of methodology of selection of Information Commissioners as there is a need to appoint more Information Commissioners given that there has been "significant increase in number of appealed filed before the Commission and there have been some Parliamentary Questions regarding pendency of appeals in CIC".¹⁶³

The Secretary states that for the filling up of vacancies, a comprehensive set of draft guidelines have to be prepared and put up to the Minister of State.¹⁶⁴ The last noting relates to the preparation of an agenda note for the meeting of the Selection Committee which was to be held on 13.12.2010. There is no discussion after that.

¹⁵⁸The Committee would include the Secretaries of DoPT, Department of Higher Education, Department of Legal Affairs, Ministry of Information and Broadcasting, Director of Indian Institute of Public Administration, the Vice Chancellor of a University, one representative from the media and one from the field of social services. The last three would be nominated by the Minister of State, Ministry of Personnel, Public Grievances and Pensions

¹⁵⁹File noting 09.08.2010 by Joint Secretary (AT&A).

¹⁶⁰File noting dated 10.08.2010 by Secretary (Personnel).

¹⁶¹File Noting dated 16.09.2010 of the Secretary (P).

¹⁶²File Noting dated 22.09.2010 of the Minister of State (P).

¹⁶³File Noting dated 07.12.2010 of the Joint Secretary (AT&A).

¹⁶⁴File Noting dated 08.12.2010 of the Secretary (P).

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LIST OF ABBREVIATIONS AND ACRONYMS

CERC	Consumer Education and Research Council
CHRI	Commonwealth Human Rights Initiative
CIC	Central Information Commission
DoPT	Department of Personnel and Training
FAA	First Appellate Authority
NAC	National Advisory Council
NCPRI	National Campaign for People's Right to Information
PCI	Press Council of India
PIO	Public Information Officer
RTI	Right to Information
W.P.	Writ Petition

2

RTI & Women

Shobha S V

THIS IS WHERE IT ALL BEGAN...

The demand for a Lokpal might be reverberating in many parts of India but the first fight for transparency in governance started in Devdoongri by illiterate women.

Shobha SV



Making a point: Chunnibai (right) is one of the oldest members of the Right to Information Movement. She is still associated with the movement and actively uses it for better implementation of Mahatma Gandhi National Employment Guarantee Scheme.

In 1996, a song sung by a singer Ila Arun became very popular. The song was called 'Vote for Ghaghra. The song was about a village belle from Rajasthan and her subsequent journey to power in 'Dilli'. And her symbol of power was the *ghaghra* of course. The swirling and twirling *ghaghra* was accompanied by seizure of political power in the video. The song reflected the journey of a woman who continued negotiating her way with men occupying many positions of power and manipulating them to her benefit.

Interestingly, around the same time, a certain '*Ghaghra paltan*' (*ghaghra* group) was gaining lot of attention among the bureaucracy of the Rajasthan state. This *Ghaghra paltan* formed the core of the group in their fight to implement Right to Information Act that started in Rajasthan in the early 90s and culminated successfully in early 2000s. So what was this '*ghaghra paltan*' all about?

Ghaghra paltan was a condescending coinage by the bureaucracy and police officials who constantly saw a bunch of rural women from Rajasthan in *dharnas* in various parts of Rajasthan demanding for rights to see the information of the work they had put in several projects in their village.

The movement would have been a damp fizz if not for these women. The struggle for Right to Information began with several people—most of them who couldn't read and write—asking a simple but a pertinent question of why could they not access the government records of projects they worked in. The birth of RTI movement has its roots in the non-payment of wages to the labourers in various government projects that went around in their villages.

"Where is our money?"

Chunnibai, now in her late sixties, is a hard working woman. She was a labourer and worked in various public projects initiated by the government. However, she never got full wages that were due to her. She often wondered why and it became a constant worry. She was not alone.

Most villagers working in government projects never received full wages. Aruna Roy, Nikhil Dey and Shankar Singh had just started working in these areas and decided to intervene. The government officials told them that the villagers were '*nikamme*' (shirkers) and hence did not receive full wages. A meeting was convened and it was decided that on a particular project the villagers will work as

per required and an assurance was also given to the government authorities. However the group was divided about the issue. Most felt pessimistic about the whole effort and had no inclination to finish the work. But some of them were still hopeful and were willing to work as they had always worked before. Chunnibai was the part of the second group and was happy because she always worked hard and always did what was expected of her.

After their work got over, when it was time to receive their wages, Chunnibai and her friends were in for a rude shock. All those who chose to do incomplete work received full wages and those who finished their work received fewer wages. Chunnibai was aghast and angry. She along with her group refused to accept the reduced wages. “We wanted our money that was due to us. We had worked hard and we wanted the money for that.” Due to various external pressures, the group was reduced to Chunnibai and her husband who did not accept the money from the government till the end. Finally, they took the government officials to the court.

It took ten years for the judgement to come out. Even though it was their first battle which did culminate into victory, Shankar Singh, an integral part of the RTI movement says, “We decided going to the courts is counter-productive and that we have to hit the streets for achieving our goal.”

“We are illiterates, not fools”

“Our society kept accusing us of being bad women. They said—what kind of women go out and dance and sing in public? What would we do sitting in the heat throughout the day? Meeting the bureaucrats used to take only couple of hours. We had to do something to keep our minds occupied. Besides don’t we all sing and dance at weddings? So what is wrong to sing and dance for such a good cause?” asks Susheela. Susheela lives in Jawaja and worked with Barefoot College and joined MKSS during the late 80s. Active throughout in the issues of women’s health, employment, etc. she found that the fight for right to information would give her the means to fight corruption. “Right to Information Act is not a solution for corruption. But we all know that it gives us great power to fight corruption.”

Having worked for close to 18 years in the movement, Susheelabai is very popular among the women in Jawaja and other nearby villages. Susheela says, “The villagers call our Sanghathan, *Garibon*

ki Sarkar (Government of the poor). They trust us to help them with their issues.”

Their *dharnas* were innovative. They stayed there night and day ensuring their pressure. “To be at the *dharna* during day, going back home at night and subsequently coming back to the *dharna* site again the next day is a recipe for failure. We had to be there day and night. 250-300 women left their homes, their land, their children, their family and stayed on for a week or ten days. When they went back, equal number of women replaced them.” The women also carried their own food while participating in *dharnas* in Jaipur, Beawar and others. Everyone was asked to bring two kilos of wheat, tea leaves among others. Several people from every village also contributed. “If we didn’t eat, how could we fight? We had to eat properly and that’s why we all made our own arrangements,” says Susheela.

The *aandolan* consisted of mainly illiterate women. Susheela remarks, “There is no difference between literate and illiterate. I have not studied much. I am just a fifth standard pass. But does it mean that I don’t have brains? If explained properly, we can understand things just as well. That is what this *aandolan* was all about.”

Story telling as a protest tool

While it was decided that *dharna* and rallies were the way to go, women participated in different ways. The rallies for right to information turned out to be entertaining ones with women playing different roles. Galkoma (who is more than 80 years old now) played a prominent role.

She was the story teller of the group. “People came from so many villages. We had to have different things to sustain their mood without boredom and frustration setting in.” According to many members, Galkoma played an important role in keeping the group together by regaling them with stories to prove her point. Galkoma was so famous that she started having a regular audience. Not only did she have admirers from the local junta, there were admirers from the bureaucracy as well. Meeting Galkoma is a delight. An octogenarian, her heavily wrinkled face almost gives a testimony to an active life which she led all these years. In the 70s, Barefoot College which wanted to start women’s groups in nearby villages of Tilonia, they approached Galkoma for being a leader of the women’s group of her village. That was because Galkoma was always involved in several issues pertaining to her village. The group met regularly to discuss

about several government schemes and the problems associated with them. By the time the RTI movement started, the women's groups around Tilonia villages were a strong bunch. Galkoma says they actively joined the RTI movement because they never received full payment of their wages and wanted to know where their hard earned money was.

Owing to familial responsibilities, women took turns to be present in the *dharna* in an effort to keep the numbers consistent. On days when Galkoma wasn't there, there used to be persistent demands from onlookers and even members of bureaucracy asking about her whereabouts as her stories regaled one and all.

The RTI movement had two major *dharnas* and women were an integral part of them. Nikhil Dey said, "While the participation of women in the day to day activities of the *aandolan* was less, they always turned out in huge numbers for the *dharnas*. They played an important role in pressurising the authorities and building a public opinion." At the *dharna*, Galkoma regaled everyone with her stories. Her stories connected daily lives of labourers and the issue of right to information. Her stories also explored the complex relationship between people and state using the analogies of husband and wife. As she tried to relate these issues to the daily lives of people, it kept the people hooked.

However, the question of where did our money go kept occupying most members of that group as along with many others who had joined the movement by then. "If they were not paying us our wages, then where did the money go? We wanted to know the answer" says Chunnibai. Later on, as the group kept travelling to various villages nearby the support from women kept growing since it was a common problem affecting everybody in the area.

Hamara paisa, hamara hisaab

Nikhil Dey opines that the women grasped the nuances of transparency very well because it affected their lives in a deep way. Even the slogan 'Hamara paisa, Hamara Hisaab' was given by a woman in the group— Susheela. In one of the *dharnas* held by the MKSS in Rajasthan, Susheela was asked by the members of the press about her understanding about the need for transparency. She said, "When I send my child to buy something from the market, I always ask him how he has spent the money I gave him. Here the government spends my money on my behalf. Don't you think I want

to know how the government has spent the money?”

Dey said, “RTI in most other countries is used by powerful groups—Media, legislators, corporate houses, etc. But RTI Act was born out of real problems of the economically weaker sections of the society. It has become the backbone of every single *dharna* and struggle. “

If one would want to trace the success of the RTI Act in future, it would ‘appear that the men were the real drivers of the act since most of the RTI applications are filed and written by them. However Nikhil Dey says, “In the RTI movement, you will see the men writing the applications but the idea of transparency and the other crucial questions are being asked by the women.” Creating the atmosphere of asking the right questions, going on *dharnas*, pressurising the authorities have mostly been done by women. Their role has been very crucial.

The *Ghaghra paltan* is asking more basic and fundamental questions. The women’s struggle has been about their immediate lives. Their struggle has been connected deeply to their livelihood. The fight for information is deeply connected to their daily lives. RTI wouldn’t have been successful hadn’t there been these connections.

No one could see the ‘muster roll’ before. Now post RTI and NREGA, muster rolls are proactively displayed. Open access to muster rolls has allowed 90% of the change. During the fight for the movement, the general atmosphere was that it was considered to be a fight for all. The fight was for an ‘achchi cheez’.

Domestic Violence

For the women, the fight for Right to Information Act involved their own fights as well. Seeta Devi, a midwife says, “I used to go out for *dharnas* under absolute fear. When I think of those days, I can only remember fear. I used to be fearful outside because I was not used to being out with others. When I used to come home, my husband used to beat me. I used to go and participate in *dharnas* after being beaten up by my husband. But it is not just me. It is a common problem.” Many of them faced violence at home for participating in the *dharna*. The women are very nonchalant about it. “What to do? We will die crying. So, we laugh instead,” remarks Seetadevi.

When asked about the violence, Dey does admit that it is one of the many areas of weakness of the movement. “I wish there was a strong women’s movement around Devdoongri like the one in

Tilonia. I don't think the problem would be so rampant if MKSS had an independent women's platform. As a collective, women are able to deal with the whole issue in a better manner."

Dey also added, "We have been taken over by many events post RTI. We are a small group and we intend to be small. But right now, every one of us is busy with different things. It is not that there is a lack of intent. But there is a lack of time. A dedicated women's platform would require a dedicated bunch of people to work locally on a fulltime basis. Someday we hope to withdraw from policymaking and maybe concentrate on different shortcomings of the movement." However he insists that things are changing. "Gender relations are changing. More and more girls are going to school. Women are not taking it. This is not the rule but it is happening, slowly".

For many it was also an opportunity that gave them tremendous self-confidence. Keli bai (60), who works as a labourer under Mahatma Gandhi National Rural Employment Guarantee (MGNREG) Scheme, joined the movement about 20 years ago despite family responsibilities. 'There was no one to make rotis, rear goats when I used to go to *dharnas*. My husband had to pitch in.'

Despite her inability to read and write, Kelibai still goes ahead and demands for information. "I am an illiterate. But now I get respect. When I go and demand information, they have no choice but to give me. Whenever I get information, I sit with my nephew and ask him to explain it for me. Recently I asked for information about a road from my panchayat. I wanted to know how much cement was used in the building of the road.'

There is a strong sense of quiet pride and an awareness of achievement too. "It is all because of the *sanghathan*. If not for it, we wouldn't have been able to do much. But then, it makes us so happy to see how the law is so helpful to all of us," says Kelibai. Crediting Aruna Roy, Seeta devi also says, "If not for Arunaji, we wouldn't have participated."

Naurtidevi or Naurtibai as she is fondly called is a Sarpanch of Harmada Gram Panchayat. Naurtibai was one of the oldest participants of the RTI movement. She now incorporates the ideals of the RTI movement while she occupies the position of power as a Sarpanch. Naurtibai became started organising women from her village and other nearby areas in 1981. She was very deeply involved in women's rights and issues of minimum wages. She then found

out that participating in this movement would answer her, the answers that she and many others were looking for—"Where did our money go?"

But her enthusiastic participation wasn't easy for her. She faced massive opposition from people of her village. "The men used to while their time away. Women used to work hard. Why should we accept fewer wages when we have worked hard?" Now, Naurtibai walks the talk. After becoming the sarpanch of Harmada, she now makes sure people get their wages on time. "Last year we caught the 'meth' supervisor cheating. We filed a police complaint and he was arrested," she says proudly.



80yr-old Galkoma
Pic/Shobha S V

Naurtibai is famous in the area for ensuring wages on time. She then says, "Most of the labourers working under NREGA are women. That is because most men in this area go to Kishangarh to work in marble factories."



Naurtibai, the Sarpanch of Harmada Gram Panchayat. (Pic/Shobha S V)

RTI IN A CULTURE OF IMPUNITY

With her fight Kamla became the first woman in her village and in nearby places to have got full payment for her home under Indira Awas Yojana

Shobha S V



Kamla Moirangthiem and her friends from Uchekontakhok village who are trained under RTI Act.

Pic\Shobha SV

Right to Information Act and Armed Forces Special Powers Act (AFSPA) are laws that lie on the opposite side of the spectrum. While the former invokes transparency, the latter is brutally equipped to quell all invocations for the same. Manipur provides for an interesting example where they both co-exist together.

The good news is RTI Act is being used widely by many women in rural areas to ensure proper implementation of Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS).

Kamla Moirangthiem is a resident of Uchekontakhok village of Manipur. In 2006, her village *pradhan* had taken her details for the Indira Awas Yojana (IAY) (Check box) But only three applications were passed and she did not get any response. Finally when her friend filed an RTI application asking for the list of beneficiaries under the IAY scheme did she come to know that she was one of them. When she approached the *pradhan* of her *gram sabha* with her request for a home, he coolly asked her to submit two photographs along with her signature on a blank sheet. "I asked him what was he planning to write in the paper"? There was no answer. "Then I asked him how much money will he give me? He thought for a minute and then told me that after deducting a percentage for the underground groups, I will get Rs 18,000 to build a house. I know I was entitled to Rs 35,000. So I refused to sign the paper".

She then filed a complaint with the District Collectorate complaining about this issue. "There was no action taken upon my complaint at all". She then filed a writ petition with the Gauhati High Court-Imphal bench in 2009. The High Court subsequently directed the administration to take appropriate action against her complaint. Finally, the District Collector responded on 11 May 2009 and directed the block development officer to release the payment in 2009.

Her retaliation infuriated the *pradhan*. "I started getting threats from the underground organisations. But all my friends supported me. Every night they would all gather at my house in order to protect *me*." However, after the death threats, she directly went to the *pradhan* and confronted him openly. "I have no enemy in this community except for you. If anything happens to me, it will be your responsibility."

The presence of non-state actors complicates the picture in Manipur. Kamla received a phone call from an underworld organisation. "They told me that I should give them 4% of the money I received. My friends spoke to them. We asked them to come and check my place to see if I can pay up the 4% they are asking *for*." Fortunately

the underworld organisations did not pressurize much.

She finally got her money in instalments of Rs 27,000 and Rs 7000. Her four year old struggle ensured that she was the first person to get the entire amount not only in her village but also in nearby areas. “People look upto me. They tell me that they also will not accept less money for building a house under Indira Awas Yojana,” says Kamla beaming with pride. Kamla and her friends are a part of a group who have been trained in the usage of RTI Act by Macha Leima, a women’s organisation. Macha Leima is one of the oldest women’s organisations in Manipur. After the implementation of RTI Act, Macha Leima formed groups in villages of Manipur and trained them to use the RTI Act.

RTI and Human Rights Violations

What is the relevance of RTI Act in face of extreme human rights violations? What is the relevance of RTI in a place which has AFSPA imposed?

Kamla’s case is definitely an example of women’s empowerment in rural areas. But it is hardly representative of the scenario in Manipur as it can easily be classified as one of the most unfriendly states for RTI. Most of the institutions of the state find themselves in the exempted list including the police, jail authorities, home department, vigilance department among others, (see box). Meihoubam Rakesh, Director of Human Rights Law Network and also the lawyer fighting Manorama Devi’s case opines that the situation is bleak. He says, “RTI Act mainly benefits people who are the beneficiaries of the Mahatma Gandhi National Rural Employment Guarantee Scheme. However, the awareness is low and most panchayats refuse to accept applications. However we cannot use RTI for instances of rape and torture. The prime human rights violators are the police department. But we can’t use RTI to dig out information because they are under the exempted list. When most of the human rights violators are under the exempted list, the effectiveness of Right to Information Act suffers.”

The Life and Liberty clause under Right to Information Act gives a right to the applicant (if his/her life or liberty is under the danger of being curtailed) to get information within 48 hours (instead of the mandated 30 days). However the loss of life or liberty is seldom acknowledged in the state of Manipur. Manipur has constantly been in news for the human rights violations— including disappearances, torture, rape among others— that have taken place owing to the

implementation of AFSPA. The Armed Forces (Special Powers) Act empowers officers in the armed forces, including non-commissioned officers, to arrest and conduct searches without a warrant, and even to shoot to kill if the officer is “of the opinion that it is necessary to do so for the maintenance of public order and only give such due warning as he may consider necessary. In 2004, after the alleged rape and murder of a local Manorama Devi by the jawans of Assam Rifles, women in Imphal came out and protested naked against the Indian army shocking not only the nation but the whole world. The case is currently in the Supreme Court.

Any information sought through the Right to Information Act which are related to the Manipur Police department including civil police, Manipur police wireless, Manipur Rifles, Indian Reserved Battalions, Intelligence wings (Special Branch & Crime Branch of CID), Forensic Science laboratory, Jail department, State Vigilance Commission and its subordinate offices and all reports of any enquiry commission, magisterial enquiries and classified reports including those of the Ministry of Home Affairs and the intelligence bureau (IB) will be exempted from the purview of the RTI Act, 2005. In this connection an official notification has been issued by K.H Raghupathi Singh Additional Secretary, Department of Personnel and Administrative Reforms (Administrative Reform Division) on May 28 which also mentioned that the said exemption was made in exercise of the sub-section (4) of Section 24 of the Right to Information Act, 2005 (22 of 2005). The official order further mentioned that, exemption of the mentioned state government departmental organizations, however shall be subjected to the provision under sub-section 4 of the RTI relating to the information sought for pertaining to allegations of corruption and human rights violation, the official notification added.

Indira Awaas Yojana(IAY) is a cash subsidy based programme, under which assistance is provided to rural BPL families for constructing dwelling units on their own using their own design and technology. Selection of IAY beneficiaries is carried out by gram sabhas. 60% of the funds provided under IAY are meant for SC and ST beneficiaries and the subsidy is sanctioned either in the name of the female member of the household or jointly in the names of both spouses. The unit assistance provided to the rural BPL households for construction of a dwelling unit under Indira Awas Yojana has been revised from 1.4.2010 from Rs.35,000/-to Rs.45,000/- for plain areas and from Rs.38,500/-to 50,000/-

The situation is complicated by additional violence generated by the presence of more than two dozen armed secessionist groups. This has led to the creation of a culture of fear, enforced silence against

human rights violations in Manipur, irrespective of the nature of the perpetrators, state or non-state, involved in each case.

Role of Underworld Organisations

Manipur represents a strange paradox of a state which has the draconian AFSPA as well as the RTI Act. Babloo Loitongbam of Human Rights Alert says, “The spirit of Right to Information Act is fundamentally opposed to the very existence of AFSPA. Most of the welfare legislations take lot of time to take root in areas like Manipur. There is an internal contradiction between RTI and AFSPA. Acts like AFSPA function around the doctrine of national security. Therefore the state ends up having unlimited power and is not accountable to anybody. This is in total contradiction to the Right to Information Act”. Currently the RTI Act is used to ensure the proper implementation of MGNREGA, Public Distribution System, etc. Loitongbam adds, “Traditionally women have played important roles in the fight against AFSPA. Women’s movement has been strong here. However in case of random disappearances, the wives cannot do much. Filing an RTI application is not a simple issue”.

Demona Takhellambam, General Secretary of Macha Leima, a woman’s organisation says, “Many a time when we file an application, the government authorities don’t accept it. If we persist, then they send someone asking us to withdraw it. We also get calls



Kamla in a pensive mood

from underground organisations. The government officials are hand in glove with the non-state actors.”

In their own little ways, Manipuri women are posing a challenge to the culture of impunity trying to use the act to their advantage.

OSTRACIZED FOR USING RTI

Three women in Meghalaya fight back after they find themselves ostracized by their village headman for using Right to Information Act.

Shobha SV



Taking a stand: (From left) Fatima Mynsong, Acquiline Songthiang and Matilda Suting at Jongsha village, Meghalaya. The trio was ostracized for using the act.

Shobha SV

Imagine finding yourself ostracized in your community for exercising your fundamental right? Sounds unbelievable, isn't it? But this is exactly what happened to three women from Jongsha, a quaint village 30 kilometres from Shillong. Fatima Mynsong, Acquiline Songthiang and Matilda Suting created headlines when they were ostracized by the village headman for using Right to Information Act. However, thanks to their persistence, not only did they manage to oust the village headman, they also managed to bring attention to malpractices that were happening in infrastructure projects under the Mahatma Gandhi National Rural Employment Guarantee (MGNREG) scheme.

The story so far

The trio, residents of an East Khasi Village was forced to use the RTI Act in order to expose the irregularities in the implementation of Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). Fatima is a member with the local Village Employment Council (VEC) and is responsible to sign the muster roll sheets of the labourers in her village who work under various MGNREGA projects. It all started in 2008 when in process of her work, she found some discrepancies in records pertaining to the implementation of MGNREGA. "Many labourers approached me with complaints that they weren't receiving their wages properly. I couldn't work in an environment like this. These labourers were dependent on the wages for their daily livelihood," she said. When she tried to clarify, she found herself ignored by the village headman and other members of the village *darbar*.

That is when Fatima, Acqueline and Matilda decided to fight against the corruption in the system. "We formed a committee with all the labourers, conducted a meeting and appealed to the local Block Development Officer to intervene," said Acqueline. However the BDO did not respond. "When the BDO did not respond, we filed an RTI with the BDO asking him details of the scheme; materials purchased, money paid to the labourers, etc."

As expected several anomalies showed up in the reply. It was found out that one labourer had three job cards to his name. Some labourers were enjoying double the wages as compared to others. It was also found that the materials were purchased at a higher cost than the market rate. The trio also complained that the social audits,

as mandated by the law, hadn't taken place.

Based on the information they received, they submitted their complaints to the local BDO office. However, no action was taken. The women made appeals to the project director of District Rural Development Agency in October 2008. The women also claimed that they did not receive the information they needed in entirety. They filed appeals and the case was finally heard at the State Information Commission (SIC). The Meghalaya SIC noted that there have been anomalies in the matter of payment of wages under MGNREG scheme and directed the District Rural Development Agency to take necessary action. Following the ruling by the SIC, they appealed to the community and rural development department on April 2009. The inquiry was finally conducted on May 21 the same year. "Once the inquiry was conducted by the District Rural Development Agency, they did not share the report findings with us and the villagers. We had to again resort to RTI in order to gain access to the inquiry report," said Fatima.

They continued their struggle by organizing the labourers. In 2010, they found from the local newspaper that they were ostracized from their community. Ostracisation involves a ban on essential food supplies which is under the control of the village headman. "We then decided to approach Meghalaya Right to Information Movement for help," said Fatima. This case was picked up by several human rights groups. The then Jongksha headman Karmelin Rynjah also defended the move saying that the entire village endorsed the step. "We received support from all the labourers after the ostracisation. However, people who were close to the headman did not talk to us. The ostracisation affected us because our essential food supplies were stopped," said Acqueline.

Chairperson of Meghalaya State Women's Commission (MSWC) Susanna K Marak, said, "When we heard that the women faced a social boycott in their village, we decided to summon the BDO, the village headman and the women concerned. The headman claimed that he was not aware of Right to Information Act. We explained that it is a fundamental right of a woman to ask for information. The ban was then lifted. Number of such cases is increasing and I am worried about it. As women's commission we do want to do something about it." It was only after the intervention of MSWC that the problem was resolved.

Significant Victories

The women's fight has not gone in vain. It was a victory for the women as the inquiry clarified all their allegations to be true. The government inquiry report found that there were many anomalies and deviations from the prescribed rules and regulations. They also observed forging of signatures, improper issue of job cards and other problems. However, despite this the women are unhappy. Despite the inquiry report having indicted the members of the village employment council for misappropriation of funds, there has been no criminal action taken against them. "We feel very demoralized with this. Our fight won't end till the people responsible for the act have been arrested".

The trio also managed to oust the village headman. Following the controversies, the chief of the village (popularly known as the king) removed the village headman from his post. Currently, the village is devoid of a headman and is administered directly by the chief." They also managed to initiate a social audit which as mandated by the act had not taken place for a very long time.

The State of Meghalaya is governed under the Sixth Schedule of the Indian Constitution. The provisions of the Sixth Schedule under the Indian Constitution were drafted specifically to administer tribal areas of North East India. Thus, instead of Panchayati Raj Institutions (PRIs), one finds Autonomous District Councils (ADCs) which are vested with more powers unlike PRIs. The ADCs have legislative, administrative and judicial powers vested under the Sixth Schedule. Every law of Centre or the state can be extended to these areas only after the prior approval of the members of the ADCs. The ADCs are also empowered to constitute village councils and village courts.

"Women do not enjoy political rights in a traditional system"

Despite a matrilineal society, women do not enjoy any political rights. Given this, the ostracisation can also be seen as a reaction of women who were using their rights given by the constitution which is otherwise denied to them within their community. Mayfereen Ryntathiang, of Grassroots, an NGO said, "Under the traditional Khasi system, women do not have any political power. They only enjoy custodian property rights. Even if she owns the property, she has to consult her maternal uncle in case of repairs, redevelopment, etc. and he makes the final decision".

The number of such cases in Meghalaya is on a rise. In July 2011, 17 families were ostracized in Mawsynram village, East Khasi Hills district for using Right to Information Act. In their application, they asked the village authorities why they couldn't avail of foodgrains supplied by the government to the village. Tarun Bharatiya, member of MRTIM said, "Ostracisation has always existed as a means of punishment in the traditional systems of governance. For instance, if someone ends up cutting a tree, s/he will be punished with ostracisation. Tricky situations arise when people within a traditional system start questioning after their access to modern schemes. This is often misconstrued as challenging the traditional authority".

Micheal Syiem, leader of MRTIM said, "One of the fundamental problems lies in the election of the headman of the villages. They are selected by vote of hands. It is a very undemocratic system. We have been demanding for the elections to be done by secret ballot. Also women have no political power. Also there is no fixed tenure. It is different in every village. They are not allowed to vote. This is changing in some places, albeit very slowly". Syiem also added that, "Since the village headman receives funds from the Centre and the state to implement schemes are other infrastructure projects; they come under the purview of RTI Act." It may be recalled that in 2010, that the State Information Commission in Meghalaya had stated that the Autonomous District Councils, all traditional chiefs of the state fall under the purview of Right to Information Act 2005. Owing to this controversy, currently MGNREGA lies suspended in Jongksha village. The government inquiry report recommended starting



Other women in Jongksha often come to the trio for help. Pic/Shobha S V

of MGNREG scheme after the resolution of the conflict. Bhartiya added, "This is a big problem. Many villagers have lost their source of income. They are also fighting to get projects under MGNREGA started".

The district administration is, however going slow on this. Also, there is a general reluctance to initiate criminal proceedings against the village headman and the other members because this would also mean that the government officials might be trapped. Most government officials keep complaining that the traditional system hinders the proper implementation of government projects. However, in this case, while the traditional chief has taken immediate action, the government administration has not done anything*. This is a classic example of how traditional structures of power also sustain modern structure."

“GIVE US OUR LAND”

With the help of Right to Information Act, a silent revolution is on in rural Gujarat as women are demanding from their families their right to property.

Shobha SV



Poster at the office of Saanand Mahila Vikas Sanghathan talking about importance of property rights for women. Pic/Shobha S V

In sleepy little towns and villages across Gujarat, a bunch of women are asking uncomfortable questions. These questions are being posed to their families, community and even government officials. All they want to know is why they are not getting their share in their family land. Leading the pack are Saanand Mahila Vikas Sanghatan, Patadi Vikas Mahila Sanghatan, Ekal Nari Shakti Manch in Kutch among others. Not only are they asking difficult questions, they are also spearheading a movement to help women in their community get what's well within their rights — a share in their family land. One of the tools used for this purpose is the Right to Information Act, which they are using judiciously in ingenious ways.

Saanand Mahila Vikas Sanghatan

A normal day in the life of Gauriben (45) would involve sifting through files of complaints, talking to women who come to her, visiting the government officials in her village among many others. Gauriben lives in Saanand and works with Saanand Mahila Vikas Sanghatan (SMVS). The group first started working on issues of domestic violence in their village in the mid-90s. They slowly graduated to working on issues of land ownership, right to food among other issues.

SMVS first emerged when a few women from Saanand village wanted to do something to tackle the menace of domestic violence. "Domestic violence is very directly connected to landlessness. When you don't have any kind of security, you are -very susceptible to violence, especially from your family. If she owns some land, she is saved of violence at home," she says. Subsequently, the sanghatan started working on related issues. "There were many doubts before if women could ask and demand ownership of land. But now we are aware of the laws that are there for our benefit".

Gauriben tells the story of a 40-year old Naniben, who lost her husband a few years ago. With her daughters in tow, Naniben went back to her mother's home. Gauriben said, "Her husband's side of her family members were of the opinion that since she doesn't have a son and her daughters are bound to go to their husband's home after their marriage, there is no need to give her any part of the family land".

She approached us for help and when we went to meet the family, they flatly refused. After meeting them a couple of times, the family agreed to let her farm but refused to transfer ownership in her name.

The sarpanch of the village also turned out to be the son of her brother-in-law further making it difficult for her. They, then demanded the 'pedinama' of the ancestral land under Right to Information Act only to find out that her husband's name does not figure as a son at all. Now, Naniben is involved in fighting for the rightful inclusion of her husband's name in the family which will then subsequently guarantee her rights over the land. The struggle continues. "In this case, the RTI Act helped us find out where the problem was. Now we know where to focus our energies," she says.

The Sanghatan is also using Right to Information Act to find out public land available for pasture. According to a government resolution passed by the Gujarat government, there are supposed to be 40 acres of land available for every 100 animals. SMVS has filed an application under the RTI Act to find the number of animals and public land available for grazing of animals in the villages of their taluk. They want to use this data to confront the government. "We see many cases of encroachment happening within our village. Why should public land go waste? We figured that this would be an apt way of keeping track of public land available for grazing," she says. "Once the public land meant for grazing is encroached upon, it is very difficult to recover it. Our people in the village themselves encroach upon the land and the panchayat is also reluctant to take up the issue."

With Saanand becoming famous thanks to Narendra Modi's government awarding land to TATA Nano's plant, her work has multiplied. Land rates have skyrocketed in the area after the TATA Nano project and people are willing to sell their land off. "We resist land acquisition. We also don't want fertile land to be sold off to industrialists. Fertile land should be used for agricultural purposes only. We have also used RTI to find out how much land the government has given to corporate firms. We also filed an RTI application to find how much land from our village has been sold off to industries" remarks Gauriben enthusiastically.

Saheda Shaikh, co-ordinator of Working Group for Women and Land Ownership (WGWLO), says, "Majority of the people are small farmers with small land holdings. Owing to inheritance issues, the landholdings get divided amongst children with the land holdings becoming even smaller in size. Most men in such scenarios migrate to cities for work and it is the women who work on the fields. But despite all the hard work, women do not own anything in paper making them susceptible to exploitation." Poonam Kathuria of

SWATI, a non-governmental organisation says, “RTI Act has really benefited the marginalised. Even though RTI has not directly solved problems, it has definitely played a role in the organisation of marginalised women.”

Despite the law giving equal rights of inheritance to women, several studies have revealed that there is a general discomfort amongst women to demand for their rights in family property for the fear of spoiling their relations with their family members. Given such a backdrop, the groups’ work always almost evokes shock and nastiness in places they work and also within their families. When they try talking to people in their villages, a common response they face is —“If our wife leaves us, then she will also take away her share of the land. How can we give it to her?” The women are also accused of being home breakers. “People also tell us that we come and teach wrong things to our daughters and wives. Some of them tell us why women need land when they are taken care of. They also keep tearing our posters in anger,” says Jamiben of SMVS.

After the arrival of TATA Nano, Gauriben says that their work has increased. “We have used RTI to find out the people opposed to land acquisition.” The group is also involved in efforts to convince people against selling their agricultural land.

She also narrated a story of a widow in Saanand who has three daughters and farmed in her land which she thought was in her husband’s name. When she demanded information about the land from the local block development officer, she realised that the land was in the name of her older brother-in-law. It has been a tedious fight for her ever since to have the land in her name.

Another place of action is Patdi, a small town located about 90 km from Ahmedabad and is located in the Surendranagar district of Gujarat. Despite the proximity to Ahmedabad, buses to this village are far and few in between. A small group of women here are trying their level best to disturb the equilibrium by asking difficult questions. These women belong to Patdi Mahila Vikas Sanghatan and have employed the use of RTI act in ingenious ways in their fight for right to property is ‘Patdi Mahila Vikas Sangh (PVMS).

The women in Patdi were motivated to form a group after increasing instances of violence in mid-90s. The instances of violence were mainly related to dowry harassment. They then received para-legal training and set out to help women from their community in distress. Their efforts received a major boost after the introduction of Right

to Information Act. Now they use the act to police the work of the government officials as well. A lot of their work also involves helping widows get their rights and raising awareness levels amongst the women in their villages regarding their rights to property.

The group have used Right to Information Act in ingenious ways. One of the things they used RTI was to find details of succession of families of five villages from their local Block Development Officer (BDO). From the response, they came to know that the families which finished their succession procedures, families which are in the midst of succession procedures and families who are yet to initiate succession procedures. Once they received the information, they have now started meeting women of those families in order to educate them about their property rights.

They have also sought information about *padtar* (wasteland) and *gauchar* (fertile) *zameen* (land). "We are seeking this information so that we can ask the government to handover land to our widowed sisters for livelihood purposes. Otherwise the land either gets encroached by someone with the connivance of panchayat officials or is taken by the government to give it to the industrialists. If the land is given to the people here for work, then even migration can stop. The burden in cities will also be reduced this way." Even Ekal Nari Shakti Manch that works with the widows in the Kutch region of Gujarat have been doing so. In fact they have also sent a memorandum to the government based on the information of wasteland they procured through the act. Gayatri Upadhyay, legal support personnel at WGWLO said that according to Bombay Land Revenue Code, government can award wasteland to vulnerable communities for livelihood purposes. SMVS is also toying with the idea of demanding public land for collective farming. The women working in the *sanghatan* are keenly aware of the fact that land ownership is their right and scoff at the attitude of land being given as a result of sympathy measures. "When the industrialists get land, even women farmers should get land. We are planning to apply to the government very soon," said Hansaben of ENSM.

Hafizaben of PMVS narrated a case of 50-year-old Ramiben from Jivangadh, who had some problems with her ration card and had to demand a new one. When the government official in charge of ration card came to the village, the woman had gone out of the village for some work. The official cancelled her card stating that she does not live in the village any more.

She was a widow and had no means of livelihood. For four months, she did not 'have much access to food. Then with the help of the *sanghatan*, she filed an RTI application. She asked the officials the reason for the cancellation of her ration card, the official who took the decision of cancellation and the witnesses (villagers) who certified that she does not live in the village anymore. She did not get any response. So they went till the second appellate authority. She was finally granted the ration card. "They still did not give us the names of the villagers who certified that she doesn't live in the village. The officials did not even get punished".

Family Pressures

One common thread binding the women of these groups is the hostile family environment they face on a regular basis. Hafizaben of PVMS says, "I started working for the *sanghatan* in the late 90s. My husband did not like me working outside of home. I had to face tremendous pressure from my family as they were very unhappy that I worked. My husband hated it because he had to pitch in with house chores as I was not home all the time. Things became so bad that I even tried immolating myself. I told my husband that I am ready to leave him but not my work. After much struggle, things are slightly better now." SVMS women also don't have it easy. Gauriben and her sister-in-law both work together with the group. While both women are helping women fight for their right to property, they have different battles at home. Gauriben's brother, she says, often mocks



Members of Patdi Mahila Vikas Sanghatan in their office. Pic\Shobha SV

her telling her to take all the land that belongs to him. “It is not easy. Family members are not always very supportive, especially in matters like these.” Mariam (37), another member of the Sanghatan says, “Women might belong to wealthy families, but they are not rich at all since they don’t possess any land in their name.”

The advent of RTI act has brought about a changed relationship of the women and the government officials. “Earlier we used to go and meet the government officials and had to persuade them for information. A lot depended on our personal rapport with the government officials. But now, it doesn’t happen. We can ask uncomfortable questions without worrying if it will spoil our relations with them.”

Problems with the Act

Gauriben complains that information is never given on time. Even when it is given on time, the information is not adequate or very ambiguous. They also have had to demand for information under the act which ideally should have been disclosed pro-actively by the government department in their offices. The group also feels that the government officials deliberately give them a tough time giving information. “Government officials ask us why we are wasting our time using RTI Act/” Members working with PVMS complain about the improper implementation of Sec 4-1 (a) of the RTI Act. Annoyed, they filed an application asking for reasons for the lack of proper implementation of the section. “A large chunk of our requests will lessen if they adequately display all the information they are supposed to under section 4. The officials are not even penalised. They are just not scared enough. Some villages in Gujarat have made things very easy by displaying information on the walls of the village. We have not been so lucky. But we will fight for it,” says Mariam. Many government officials also call them to their offices for a meeting and refuse to give information on paper. Section 4 is never implemented properly. Ramiben says, “The officials should be punished. They have no fear of any wrongdoing.” Hansaben of *Ekal Nari Shakti Manch* says, “We feel that the 30-day period to give information should be lessened. The government officials take 30 days to provide us with inadequate information. The subsequent appeals just prolong the case and dampen our spirits”.

“I HAD TO USE RTI TO OBTAIN MY HUSBAND’S POST MORTEM REPORT”

Wife of slain Mumhai cop Ashok Kantte narrates her journey of obtaining information through RTI that finally culminated into a book co-written by RTI activist and journalist Vinita Deshmukh

Shobha S V



Vinita Kamte (left) with Vinita Deshmukh

It was the feeling of having the doors shut on one's face that Vinita Kamte experienced again and again. The people shutting the door were the same people who used to work with her husband. Vinita Kamte is wife of Ashok Kamte, Assistant Commissioner of Police, Mumbai who was killed in the terrorist attack in Mumbai in 2008.

After his death, along with grief, Kamte had many questions. Questions that she found had no easy answers. Kamte says that from initial reports after attack, it seemed that her husband along with his colleagues who died in the attack, went on facing the terrorists without any preparation and safety of sorts. "Something just did not feel right. I wanted more information. I knew for a fact that he always carried a weapon with him," she says. She then went on a mission to find out more about the circumstances that led to her husband's death.

However, she found that the journey wasn't easy at all. The very officials with whom her husband worked with were not forthcoming at all. What followed was a period of intense grief, anger and frustration. "I never thought I would have to use Right to Information Act to get information that I thought would be easily available to me." "We first wrote to the Commissioner asking for the information. We had the right to know. All we wanted is to see the call log records. He sent a letter to Joint Commissioner-Crime. Then we waited for one and a half months. We realised that the information was not forthcoming even after one and a half months. That's when we decided to use RTI."

"They kept telling us that the information we are asking for will hamper the investigation. But we did not ask for Kasab's records. We just wanted to know my husband's call records and we couldn't understand how that would hamper the investigation." Kamte subsequently appealed to the first appellate authority. "They had not even come prepared for the hearing. That is what surprised us. I thought they were taking the whole thing so lightly."

When the State Information Commission finally ruled that the Mumbai Police ought to give information about the call records to Kamte, Kamte thought it was a win. However she was surprised by the hindrances she had to face even then. "When we went to have a look at the call records, they showed us the photocopies. We were appalled. Where were the originals?"

They then wrote to the higher officials asking about the originals.

“They wrote back saying that the originals have been sent to the Ram Pradhan committee and that they don’t have it right now with them.”

Kamte says that since her sister was a lawyer, it was easy to ask the right questions. There were no mistakes in the drafting procedures. Still we faced harassment. I can only imagine what someone with no access to such help might have to go through.”

During this whole conversation, Kamte also rues the sad conditions that did force them to use the act. “I had to demand the post-mortem report of my husband through RTI. Is this how they treat the family members of police officials who died? I got the post mortem report after five months. Some people have told me since my husband got an Ashok Chakra, I should stop this.”

As Kamte narrates her tale of frustration, Vinita Deshmukh looks on. The latter isn’t hearing the story for the first time. The duo collaborated together on writing the story of Ashok Kamte’s life. Deshmukh is not just a writer of this book and has deeper connections with RTI Act.

A chance encounter led to a partnership that finally culminated into a book. “Vinita heard about me using Right to Information to procure call log records. She visited me and offered to help me with regards to RTI Act. One thing led to another and we were then collaborating on a book,” says Deshmukh.

For Deshmukh, this was an important story unfurling right in front of her eyes. “I had to write about this. Also, I was very closely associated with the Right to Information Movement. That is why I approached her.”

Working with Prakash Kardeley, the famous journalist and an RTI activist, Deshmukh says she was trained to deal with RTI Act right from the time there was an act for the state of Maharashtra. Deshmukh laments, “Journalists hardly use the Right to Information Act. This is an act which can be used so well by the media. But then, not many are using it.”

Recalling her experience as the editor of *Intelligent Pune*, a weekly newspaper, which has now shut down, she says, “At *Intelligent Pune*, the weekly newspaper, all our reporters had to use Section 4 for stories. Almost all our stories were about our journalists inspecting files of various government agencies and writing about the findings of the same”.

Deskmukh writes a weekly column on Right to Information Act in *Moneylife* magazine where she writes only about various aspects of the Right to Information Act.

Deshmukh recalls that the first application she filed was in 2005. “We filed an* application to get information about the number of labourers who died in construction sites all over Pune. This was after the construction boom in the city. Apart from that, we also wanted to know if contractors or builders were arrested. We did several stories and wrote about all the information procured extensively.”

She continues to use Section 4 of the Act even for writing her columns. “This is the main problem everywhere. If Government departments used Section 4 well, there would be no need for the people to run for information. Half the RTI applications will be reduced,” says Deshmukh.

With the release of the book two years ago, Kamte put a lid to all questions that were raised with regard to her husband’s response after the terrorist attack.

“We found out many calls were made to the control room regarding the attacks. But no information was conveyed to my husband and his colleagues who rushed to the scene on hearing reports of violence. We also found out other irregularities, thanks to the RTI Act” says Kamte. “It was important to know what happened back then. They tried our patience. The more they pushed us, our resolve grew stronger.”

THE STORY OF ENDLESS WAIT AND LIGHT AT THE END OF THE TUNNEL

*After the riots, many women have used RTI Act pick up
remnants of their life to lead a life of dignity*

Shobha S V



*Noor Jehan has devoted the last nine years of her life helping the victims
of the riots of 2002*

What happens in the aftermath of a communal conflict? What happens ten years post a communal conflict? The struggles on the ground are many. Most of them are seemingly small and achievable. But life for the aggrieved is filled with these seemingly small struggles which are made doubly tough by the shoddy government administration.

After all, why should delivering compensation for widows take so much time? Right to Information has now become a way of trying to figure out the reason for the laziness of the government administration. While justice has been hard to come for the riot-affected people, Right to Information Act is helping them apply pressure on the justice delivery mechanism. One of the major problems that Right to Information Act has been helping the activists has been to deal with widow compensation. 38-year-old Noor Jehan started working with the people of her community immediately after the riots. Originally, a homemaker, she faced a lot of opposition from her family for doing this work. "Our family was not directly affected by the riots. But several women came to my house asking for help. Initially I helped them with clothes. My heart broke as I met more women and I slowly started getting involved seriously." Noor Jehan has helped many women file right to information applications. She has also helped many women get their widow compensations, ensured their houses were rebuilt, etc. Currently working with 'Bharatiya Muslim Mahila Aandolan, she says that her journey was not easy. "My family couldn't understand why I was doing a work which required me to venture out all the time. They did not like me doing this at all. I had to send my younger daughter to Delhi to study because I couldn't take care of her and there was no family support" she says. "However things are much better now. They support my work and my life's a lot easier."

One of the many people Noor Jehan helped was women like Firoza Bano in Juhapura. Juhapura is one of the largest areas with Muslim population in Ahmedabad. It became more of a ghetto especially after the riots, which saw many families from all over the city moving here. Bano is a 26-year old woman who works as a domestic help. She lost her husband during the riots. "I got a compensation of Rs 60,000. I was told the amount was put as a bond and that we would get Rs 600-700 pension every month. However, the money was very irregular. I wanted the money back. When I asked for it, the officials kept misguiding me. I attended an RTI camp and some people helped me and many other women file an application asking

for information about the details of the bond. After some months we got my money back.

Many women who were affected by riots are now helping members of their community get information on various issues using Right to Information Act. 41-year-old Rashida Ansari lost her home during the riots. A resident of Behrampura in Ahmedabad, she and her husband had a narrow escape from a mob which was all set to kill them. "My home was burnt. I still get nightmares of the day when a mob chased us with knives. I was sure one of us would die." Rashida later rebuilt her life. She now works for Aman Biradari. She has been trained to use the RTI Act by Janpath, an organisation which works hard to spread RTI awareness.

Ansari has used RTI mainly for helping many widows for their compensation purposes. "I help all those widows who have not received compensation." However Ansari says not many women like her end up using RTI for their benefit. "Women don't use the Act so much. There is a lot of fear. Also, the women I end up helping are very poor and don't have time to learn these things."

38-year-old Sharifa Chhipa, a resident of Ahmedabad says, "I work with people in the new Muslim settlements. It is a tiresome process waiting for information we need. I try and motivate the women in my colony. But they tell me that if I, a working woman, can face such harassment, how are they to have get the information easily."

Right to Information Act has helped people not only to demand for their rights, it has also helped women keep a track of the Government's action or the lack of it post the riots. 48-year-old Afroze Jahaan works with Aman Biradari, an NGO in Ahmedabad. For her, RTI Act has helped in collating information about various aspects related to rehabilitation of victims. Though Afroze was not directly affected by the Gujarat riots, she lost her father and grandfather to communal riots that happened in Gujarat in the 80s.

Afroze Jahaan was also involved in collecting information about FIRs filed against the riot accused in various police stations across the state. Jahaan says that the government officials always want to know why we need the information. She also collected information about compensation to widows. "When I had asked information about the widows, a government official kept on asking me why I needed this information. He also wanted to know what I am planning to do with this information."

Battling suspicion has almost become a professional hazard. She asked several questions about the 86 Muslim colonies in Gujarat that came up after the riots. “I asked information about number of children, adults, widows, houses in every colony. I also asked them the details of people who have received compensation, the facilities the colony residents are liable to receive under law and the facilities currently in place.”

Problems

Another government official also had a private chat with me where he asked, “Why are you taking so much tension? (sic) Why are you working so hard?” This wasn’t an easy task. I had to go to every district for the information. But that wasn’t an issue. So, what has she done with all these information?

Using this information, she has met the widows separately and work with them. “Using the data, we met up with the dropout children from school and are working with them.” She has also shared this information with other researchers. “I have shared the information I have with people who are interested. Even in future, people who are interested in the data we have collected can approach us.”

All basic niceties get thrown away if she tells any government official that she needs information under RTI. “They don’t even talk properly with us. They are always irritated with us,” says Jahaan. Ansari says dealing with government officials when she files an RTI application is never easy. “Quite often, their replies are convoluted. There have also been experiences of intimidation” ’Waqar, an activist in Ahmedabad says, “The riots happened in 2002 while the Act was implemented only in 2005. The initial three years were very crucial and there was no way one could use the Act during that time. A lot of information that could have been obtained back then. It is a battle for collecting information. It is not easily available, we have to obtain it.

Innovative use of RTI

RTI Act is also being used now to build up archives of historical information. Take Teesta Seetlvalad for example. The fiery activist who has been relentlessly fighting against the matters related to communalism all over the country is now using RTI to obtain information on how the government (Centre and state) responded after every major communal riot in the country including riots after

Babri Masjid demolition, Gujarat riots and various others all over the country. Seetalvad admits collecting information from all over the country is a cumbersome process. "State plays an important role especially in the aftermath of a communal conflict. I am interested in knowing how the states have registered cases against people and the subsequent prosecution rate. I am collecting this information as a part of a larger research that I am involved with. We are currently working on sorting out the information." She plans to make the information she has obtained accessible to the public in future.

As a parting shot, Seetalvad says, "Right to Information Act is more than a law. It is an idea. Unless people are politicised, unless people come together against the very system harming them, RTI Act by itself cannot help them"..



Muslim women activists, who use RTI, at the Aman Biradari office in Ahmedabad

‘HOW CAN I FILE AN RTI WHEN MY HOME GETS DEMOLISHED EVERY OTHER DAY?’

*Right to Information Act does not really empower the most
vulnerable urban poor women in Mumbai*

Shobha S V



*Graffiti on the wall asserting their right to live at Ganesh Krupa slum near
Bandra, Mumbai after demolitions*

I have only filed five RTI applications in the past five years,” says Sonu, resident of a slum in Mankhurd, Mumbai. “I wish to use RTI regularly. But then most of my time is spent in trying to save our homes from demolition.”

According to the 2011 census, the slum population in Mumbai is 78% of the total population. This is a massive jump since according to 2001 census, the slum population in the city was about 60% of the total population. Right to Information has been mostly used to the urban poor to keep a check on the irregularities happening in the slum rehabilitation schemes for them. According to the current slum rehabilitation scheme, only people living in slums before 1995 and in some cases before 2000 are eligible for rehabilitation. This puts a huge number of people outside of the scheme and they are considered as illegal encroachers, which means they cannot demand for basic services that other citizens get easily.

So while a large number of people in slums are using RTI for their housing rights, people living in slums post 2000 are very vulnerable to slum demolitions. Sonu lives in one such slum. Despite being the most active female RTI users in her slum, her predicament is similar to most slum dwellers in the city. RTI has been majorly put to use by housing activists in Mumbai for accessing important services for the urban poor. If Sonu, the most active member in her slum, has used RTI so sparingly, one can only imagine about the majority of the urban poor.

Sonu was forced to use RTI Act three years ago when the community faced problems in procuring a ration card. “When we went to ask for our ration card, the government officials said that the year’s quota was over and we couldn’t get one. When we kept persisting, the official said that unless we don’t have the right documents—voting card, birth certificate, electricity bill and others— they won’t issue us.” That’s when she first filed an RTI application.

Sonu says that it was one of her most frustrating days. “We then filed an application asking them details of people who got ration cards based on all the documents that they say are required to be submitted from Anna Bhau Sathe Nagar over a period of one year. They also demanded photocopies of the documents submitted by the said people who received the cards. They did not give us the information. When they finally did, they said we will have to pay Rs 1,66, 990 to procure the photocopies.” The massive sum of money baffled Sonu and other members of her community. “Do you think I

have the *aukaat* to pay such money?” she asks. They stopped their struggle there. When asked why she did not pursue it further, she said she felt demotivated. Finally they hit upon a plan to get the same documents. “We decided to find a person who lives below poverty line (BPL). Then we do not have to undergo this harassment.”

While the interview was on, Sonu was also tiling her home, which was all dug up. She answered all the questions even as she calmly kept applying layer of cement on the ground. Even as she was renovating her ramshackle home, she told in a matter of fact manner that her home is in a danger of being demolished by the government anytime now. Sonu works actively with the *Ghar Bachao Ghar Banao Andolan*, a movement started by slum dwellers fighting for their right to home in Mumbai. Her active work has made her popular in her *chawl*. When asked why other women aren’t using RTI like she does, she says, “Most of them are illiterate. Also, women end up shouldering the responsibility of family especially in the face of demolition of our homes. Women do support our work but then they don’t have the time.”

Sonu speaks of Right to Information in a hopeful voice. “Ashok Chavan, the Chief Minister of this state had to go, thanks to Right to Information Act. This Act has helped us expose big builders’ wrong doing. RTI has shown us the way to fight for our rights.”

Women Most Vulnerable to Demolitions

But even as she says this, Sonu has filed less than five RTI applications in as many years. When asked the reason for such less number of applications filed, Sonu says, “There is just too much work. Most of the time is spent in trying to save our homes.”

Amita Bhide, Professor with School of Habitat Studies, Tata Institute of Social Sciences says, “Demolition and threats of eviction affect the women in the family the most. This is because they are responsible for the family. When their houses are broken, they go through immense physical and psychological pressure. They are the worst affected.”

Sonu says that with the fear of demolition always lurking around, it becomes very difficult to focus on anything else.

Illustrating her point, she says, “In May 2010, we demanded under RTI Act information about all the legal and illegal occupants of Anna Bhau Sathe Nagar after the demolition that happened in 2004. We

also demanded the names of addresses of the legal occupants who were said to be rehabilitated. Just a week later, they came and demolished our homes again. Again, all our energies were spent in getting our lives back in order. We haven't been able to follow it up."



Sunita Bhanage

Sonu says that she does not like using RTI. "If government is working properly, what is the need to use RTI? We have often thought of not using the Act. But then the government officials do not talk properly and we are forced to use it."

Other Problems

While Sonu has been using RTI to demand legal citizenship for herself and her other community members, there are other women in Mumbai who are using it to put pressure on the government departments for ensuring proper services. Sunita Bhanage (38) living in slums of Bandra got trained to use RTI by an NGO in 2011. As a part of her assignment, one of the first things she was asked to do was file RTI applications to find out more about the financial assistance rendered by the government. When Sunita went to ask for information from a friendly government official she interacted with daily, she did not expect the process to be a difficult one. "I went to the local office of Suvarna Shehri Rozgaar Yojana and asked for the required information. The official initially spoke kindly to me and offered to give me information unofficially. When I told her that I have to use RTI as a part of my assignment, she still did not agree. Sunita says that the officials there gave her a tough time and asked her to go to the main office in South Mumbai. "When I went there they said that I could have gotten this information from my ward itself," she says. Sunita reflects upon how her decent relationship with a government official was spoilt despite her using RTI for an assignment.

Simpreet Singh, an activist who works with slum dwellers and housing issues in Mumbai says that the RTI Act has not helped them beyond a point. "While many people are filing RTI applications in

slums, most of the time they don't get information. Even if they do, no action is taken against the errant officials. It is very disheartening for the people. So we have had a mixed experience with the Act so far." Singh says that while RTI Act helps uncover corruption, it is useless when there are no anti-corruption measures in place. "The Act entitles you to information and not service and this section of society needs mainly the latter."

Earlier Singh used to personally file RTI applications for many people living in slums. "I gradually started training them. Now many of them file the applications themselves and are training others too. When they get a reply from a government official, it is a matter of pride to them."

Recently, RTI played a very important role in the Golibar Andolan where the slum dwellers in Khar area of Mumbai got several relevant documents exposing corruption in the slum rehabilitation scheme. They are currently fighting a case in the court based on those documents.

Sitaram Shelar, project co-ordinator with Yuva, an NGO that works with the urban poor in the city says, "We have used the RTI Act for many purposes including housing, water, etc. But it is solely for people who reside in slums that are considered as legal. When someone who stays in an "illegal slum" asks for information about lack of sanitation facilities, the government promptly writes to them saying that they are not obligated to provide services to an illegal slum. Thus their scope of using RTI is very limited."

The issue of slum dwellers is a contentious one in Mumbai with the mainstream media not devoting much attention to the issue. "Our demands and issues do not usually get featured in mainstream media," says Singh. "But RTI has helped us bridge a gap with the middle class who think of slum dwellers as encroachers. We have been able to expose many scams using RTI where we have shown that big builders have been the main encroachers. When we go and tell them that these are the information obtained by RTI Act, they do take us seriously and our issues do get covered. That way, RTI has been immensely helpful."

Can transparency alone solve urban poor's problems? Or is there a need for something more? While RTI has helped the cause of urban poor in Mumbai, it definitely hasn't helped solve their larger problems. The larger system is still unfriendly towards them.

Meanwhile Sonu is still worried about her house. Her colony, where she has been living for more than ten years now, is considered illegal. When asked how she can go ahead and prove her legality, she said, "We all need a ration card. That's it."



MY OBSERVATIONS

My fellowship work is a journalistic endeavour. I travelled to Mumbai, Pune, Ahmedabad, Shillong, Imphal and their nearby villages as also the villages of Rajasthan where the RTI movement first started. There I met many wonderful women. As I spent more time with them, I learnt more about their realities and the ingenious ways that they used the Right to Information (RTI) Act for various purposes. I wish to share my personal observations in the backdrop of my fieldwork.

It was refreshing to see rural women engaging with the act in very many different ways. Most of these women I interacted with were in rural areas using the act in very unhelpful conditions. For instance, the women I met in Gujarat used RTI to fight for their right to property. Most of them were widows or were abandoned by their family for different reasons. They also used it for Mahatma Gandhi National Rural Employment Guarantee (MGNREG) programmes. Here the women are currently facing maximum opposition from their family, community and also from government officials. Not only are they using the act to get more information that will aid them in having a property of their own, they are also using the act in very creative ways for advocacy purposes.

My perceptions of matrilineal societies being empowering for women were shattered when I went to Meghalaya. I met up with three women who were ostracised for using the RTI Act. While women (belonging to Khasi, Garo and Jaintia tribes) do inherit property in Meghalaya, they don't enjoy political rights. Since North East comes under the sixth schedule of the constitution, the local self governing institutions, i.e. the Autonomous District Councils have more power than the Panchayati Raj Institutions. Women in many areas cannot vote. Given this backdrop, it was interesting to meet these women who challenged many social norms by using RTI and also ended up ousting their village headman in process. Since then, there are many cases of ostracisation being reported in the state.

In Rajasthan, I visited Devdoongri and nearby villages and also villages near Tilonia in order to meet women who were involved with what can be called as the first battle for RTI Act. Meeting them was one of the most cherished experiences as they narrated stories of how they participated in the movement in various ways. Many among them are now in positions of power. However, many of them

still lead simple lives but then they are also aware of the difference they have made as a whole throughout the country. They have channelized all that they fought for in the better implementation of MGNREG schemes.

Visit to Imphal was one of the most interesting trips. I was curious to know what it meant for the state which has both AFSPA and RTI both functioning at the same time. While the former functions on the basis of no accountability, the latter is an exact opposite of that. This was a place where the state exerted its power over the citizens in various ways. Crucial government agencies in Manipur—including jail, home department, police—are outside the purview of RTI. Therefore people are not entitled for any information from these agencies except during matters pertaining to “life and liberty” clause. However, RTI is being used on a major scale on matters pertaining to Mahatma Gandhi Rural Employment Guarantee Scheme. This has been common across wherever I went—Gujarat, Rajasthan, Manipur and Meghalaya. It has been widely reported that MGNREGA has seen a massive participation by women all over the country.

<http://www.downtoearth.org.in/node/2282>) In all the places I went, I noticed that women were taking active initiative in making sure that MGNREGA works are corruption free thereby really challenging the prevailing status quo.

However, it was in Mumbai that I felt RTI faced a kind of a test. Can RTI Act really help those people who are considered illegal in a city? How can RTI help those for need it the most? In Mumbai while talking to some women living in slums, they told me about how even though they wished to file many RTI applications, they couldn't because most of their time was spent in making sure that their houses were not being demolished by the government. In Mumbai, only slums till before 1995 and in some cases before 2000 are considered to be legal. Therefore a large number of people are considered as encroachers. The case of urban poor in Mumbai is a classic example of how people can use laws for their benefit only when their basic needs are taken care of.

In all the places I went, I realised, most women especially in rural areas are not treated well when they ask for information. The mistreatment can deter many women who are venturing out for the first time. The women say the government officials do not respond to them favourably. The momentum of women demanding accountability from the government officials should not ebb away.

Sensitisation workshops for government officials with regards to the use of RTI Act would be a welcome thing. Also Section 4 is hardly followed by government departments. Most women I spoke to told me that since the penalties are not severe, the government officials feel no fear. There have been many questions that arose in my head during my field trips. But I did realise that RTI Act by itself does have its limitations. Right to Information Act as Teesta Seetalvad told me is not just an Act, it is an idea. While transparency is a very important tool for proper governance, it is not a substitute to a larger struggle.

Suggestions

Firstly, I am very thankful to the department of personnel and training (DoPT) for having given me this opportunity to do this kind of work. Personally, this has been the kind of work I have always wanted to do and this fellowship couldn't have come at a better time. Travelling to different parts of the country was the perk I will always cherish. Working in mainstream media can be very constricting. One does not always get a chance to go to rural areas and write about development processes that are impacting us in such different ways. So I am thankful to you once again.

However, there was one crucial problem with the fellowship I would like to talk about. One of the main things I have been very unhappy about was the disbursal of money. Since the department expects that we do not work for the period of three months to focus completely on our fellowship work, I fail to understand why we were not given the monthly instalments on time. I can speak for myself. Media organisations are privately owned. Unlike a government organisation, where one can get leave on pay, we get leave (for three long months) only on loss of pay. How does the department expect us to survive with no monetary compensation at all? If the department cannot ensure proper payment of instalments at the end of every month, then I think they should not insist that the fellows work full time on this fellowship.

For instance, as a journalist, I can perfectly work for my organisation too and can also do my fellowship work. It won't be easy but I would not be devoid of a monthly salary at the end of the day. I would urge you to reconsider this issue.

Thank you.

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Tarun Bharatiya and Mayfereen Ryntathiang in Shillong.

3

**Awareness and Accessibility
to Information of Vulnerable
Rural Citizens Under the
RTI Act 2005**

**A Study in Four Panchayats in
Rajasthan**

Research and Documentation by
Sowmya Sivakumar

AN INTRODUCTION

Lost in the din, fervor and high-pitched theatrics around the Lokpal Bill is a forgotten story that takes us back six years – to the passage of a legislation that was meant to truly empower each and every citizen of this country to hold people in power accountable. The national Right to Information Act, 2005 is no longer in a stage of infancy – it should have, by now, acquired all the robustness and energy of a rollicking six-year old. But in a good part of rural India, evidence tells us otherwise. This paper is a small attempt to go to the roots and ascertain why awareness on such a potentially empowering tool is still so low, and accessibility to information so tough, for those to whom it probably matters the most.

This paper is based on extensive field work in four panchayats of two districts in Rajasthan in the months of April-June 2011. It takes on board all observations, information, opinions, data and inputs from primary and secondary sources, emerging from wide-ranging interviews with rural residents, their political representatives, field level functionaries and higher level government officers therein, on awareness about and accessibility of information under the RTI Act, 2005.

The paper is divided into 7 sections. The first six sections outline the research background, subject, objectives, methodology, study area and limitations. The seventh section presents the crux of the study's findings. This section is further divided into three parts. The first looks at various dimensions of awareness of the RTI Act. It throws light on the extent, depth, conceptualisation and reach of the RTI Act among various societal actors, channels through which it reaches them and explores why awareness itself is so unequal. The second captures all the attempts to create awareness since the Act was passed in the four panchayats studied. This includes (a) efforts of the government or government related agencies, (b) methods of dissemination practiced by the MKSS as pioneers of the RTI movement in Rajasthan and (c) any other efforts by political representatives, individuals or organisations in any of the four panchayats. The final part identifies where existing attempts have fallen short of their objective and sets a direction on how awareness about RTI may actually be heightened.

Background and Rationale of Research

About a couple of years ago, two large scale national surveys focused on identifying key issues in the implementation of the Right to Information Act, 2005 brought to fore many significant weak spots in the implementation and use of the RTI Act across the country. One was the Department of Personnel and Training, Government of India's commissioned nationwide study executed by international management consultancy Pricewaterhouse Coopers which submitted its final report in 2009¹. The other was a "People's RTI Assessment" by civil society groups under the banner RTI Assessment and Analysis Group (RAAG) and National Campaign for People's Right to Information (NCPRI), whose goal was "to ascertain how India's nascent right to information regime might be further strengthened" and came out with its summary report in the same year².

It is striking that, among the many issues that emerged, the foremost finding highlighted by both studies was the low level of awareness about the RTI Act in rural areas. While the RAAG-NCPRI study declared "**there is poor awareness about the RTI Act, especially in the rural areas**" and found that "in only 20% of the over 400 focused group discussions organized in villages was there even a single person who knew about the RTI Act," the PwC study revealed that **only 13% of the respondents were aware of the RTI Act in rural areas**. Significantly, it went on to say, "The awareness level among OBC/SC/ST category citizens was low when compared to awareness level among general category citizens."

The PwC report also pulled up the government for making inadequate attempts to create awareness, although it has been made responsible under the Act: "While the Act has been clear in defining the responsibility of the appropriate Government, with respect to creating awareness on the Act, there has been lack of initiative from the Government's side. The efforts made by appropriate Governments and Public Authorities have been restricted to publishing of rules and FAQs on websites. These efforts have not been helpful in generating mass awareness of the RTI Act. As compared to RTI Act the common citizens (and disadvantaged communities) are significantly more aware of other Government schemes focused on socio-economic development," it highlighted.

¹Titled "Understanding the "Key Issues and Constraints" in implementing the RTI Act," June 2009

²Executive summary of the RAAG-NCPRI report is available on the website <http://rti-assessment.org/>

Related to the fundamental step of applying for information, another important finding of the RAAG-NCPRI study pointed out that “Applicants, especially from the weaker segments of society, are often intimidated, threatened and even physically attacked when they go to submit an RTI application, or as a consequence of their submitting such an application.”

While these results in themselves are highly significant, there is an urgent need to probe further into the conditions that cause them and thereby throw more light on how they could possibly be overcome. This research thus proposes to take off from what these two findings have revealed.

Subject to be Researched

To be aware, and to be able to successfully apply for information without any fear – one could aver that these constitute the very fundamentals of an effective implementation of the RTI Act. Contrarily, both these aspects have been established by the two large scale studies by RAAG and PwC as two of the most important gaps in implementation of the RTI legislation, right at the starting point of a long chain of entitlements under the Act. In fact, they also show that the opposite i.e, lack of awareness and harassment and threat to applicants are more rampant, especially in rural areas. The gravity of this situation requires a deeper understanding of what are the factors that hinder awareness at the lowest rungs of the rural society and how exactly does the existing power structure play to stifle attempts by the common man in a village to even take that first step to apply for information.

On the other hand, in villages where there has been a culture of transparency and openness due to honest elected representatives, or the presence of a social movement or organization committed to a social cause, it is also very important to understand what exactly this has led to in concrete terms – for the villagers, in their level of awareness and freedom to use the RTI Act and its spiralling virtuous effects on public accountability, fulfillment of their own basic needs insofar as they are provided by the government and actual development.

The research was also aimed at critically analyzing the steps being taken by those mandated under the Act to raise awareness, proactively provide information and understand the constraints, if any, faced by them in carrying out their duties under the Act.

Objectives of The Research

The main objectives of this research were:

- a) to delve deeper into aspects relating to awareness about this right and the legal entitlements under the Act and importantly, how it related in the minds of rural society's most vulnerable sections to their basic living needs
- b) to identify and explain problems of harassment and intimidation faced especially by weaker sections within rural areas and the factors that encourage or minimize both of these, an understanding of their settings and the actors who played as protagonists in either scenarios
- c) to explore how simple yet effective steps which may be in practice in the panchayats of study, could be used to raise awareness levels and pro-active disclosures, with or without the use of technology
- d) to understand problems, if any, faced on the side of the government officers in raising awareness or dealing with applicants at the point of application and
- e) to identify areas and means by which the state and central governments could play a role in raising awareness, pro-active disclosures and smoothening out the process of applying for information, especially for whom access to information is closely linked to access to basic entitlements for survival.

Mode of Research

This study was conducted as a micro-level, primary, qualitative field research undertaken largely in an exploratory mode. The research tried to address its objectives through in-depth one-to-one interviews, case studies, discussions and observations in the region of study. Rural residents from different backgrounds, elected political representatives, local kingpins, government field-level functionaries at the panchayat, block, tehsil level and district levels as well as state government officials at the Secretariat were spoken to.

The emphasis was to interview people belonging to the most vulnerable sections in these panchayats, including those not aware of the RTI Act, aware and had tried to apply and those harassed or threatened in the process of filing applications, wherever found.

The unit of study in the research was the individual. The panchayat was considered only as convenient starting point to identify individuals living therein, as it is the lowest unit of political organization and devolution of funds for development. Thus the purpose of the study was not to survey all residents of the panchayat chosen, but to identify a cross section of individuals from various backgrounds to see how in each of these cases, different factors played a role in determining awareness levels and actual use of the RTI Act.

One-to-one interviews were strongly preferred to group discussions, so that one could capture the true level of awareness at the individual level.

This being said, the research considered all RTI applications emanating from these panchayats filed by its residents at any tier or department, i.e at the panchayat, block, tehsil, district or state level (or even central, if any) offices.

Area of Study and Panchayats Chosen

The field research was conducted in four panchayats in two districts in the state of Rajasthan. The basis for choosing these panchayats was as follows:

- Two panchayats where the *sarpanch* (elected head at the panchayat level) or a key political representative or field level officer was known to have shown openness and transparency in dealing with development works in the past, with or without any active movement on RTI or a strong presence of NGOs/groups working for a social cause in these panchayats and
- Two panchayats of similar characteristics in the neighbourhood of the first two, where there are no such active movements, NGOs or groups, and where the *sarpanch* has no particular track record in being honest or transparent.

Cheese and Chalk: Vijayapura and Jilola Panchayats (Rajsamand District)

Vijayapura panchayat in Devgarh block was a natural choice in Rajsamand district, for a panchayat with a known history of transparency. Kaluram Salvi, a member of Mazdoor Kisan Shakti Sangathan (MKSS) which pioneered the RTI movement in Rajasthan and has its base in Dev Dugri (about 27 kms from Vijayapura),

contested and won the panchayat elections in 2005. His wife Rukmini Salvi won the sarpanch seat (reserved for women) in 2010. Hence it was assumed that the MKSS work philosophy would strongly reflect in this panchayat. Kaluram's own history of standing for openness and transparency goes back to before he became *sarpanch* and indeed, before he joined the MKSS - as a part of Vijay Navyuvak Mandal in his younger days. He has fought on many issues along with his co-villagers including land grab by powerful parties, violation of minimum wages of workers and against social practices like child marriage and *mrutyubhoj*. His work on transparency and in MGNREGA in the panchayat has won him accolades and recognition on the national platform.

Vijaypura panchayat has about 32% of its population belonging to the SC community with the OBC (Rawat) community constituting the largest chunk of population there. It has 9 revenue villages of which it was decided to concentrate on residents of 2, i.e., Vijaypura (which has three parts – Vijaypura, Narayanji ka Oda and Narayanji ka Bida) and Kiton ka Badiya.

Although it was originally planned to find the other panchayat in an area neighbouring to the first, it was decided to look for one in a block other than Devgarh. This is because, on talking to various public authorities in Devgarh block, it was evident that their behavior, attitudes etc towards RTI had been conditioned by MKSS's continued presence in the area, and it was important to this study to understand what would be the public authorities' attitudes and initiatives (or lack of it) in a non-*sangathan* area, as this is what people living there would be facing.

For similar reasons Bhim and Rajsamand blocks (which has strong sangathan presence, or has the district headquarters close to it) were also ruled out. Finally Amet block which borders Devgarh block was zeroed in upon. Within Amet block, Jilola panchayat was chosen as it had a proportion of SC/ST population similar to Vijaypura, and lay in the non-marble mining portion of Amet block (about half of Amet is covered by marble mines and choosing a panchayat in this belt would have led to very different characteristics). Jilola panchayat has four revenue villages, of which the field work was focused on 2 i.e., Jilola and Badla.

Much in contrast to Vijaypura, the sarpanch of Jilola Girija Kanwar is the daughter-in-law of Purushotam Singh, still considered a "feudal lord" of sorts in the area. He is respectfully referred to '*bana*' or '*bauji*'

in the village. Villagers say that the sarpanch herself does not reside in the village, but spends most of her time out, such as in Udaipur where the family owns a big hotel business. Interestingly, both ex-sarpanch Ramji Gujjar and the Thakur are old Congress hands and in fact, the latter is said to have supported the former in the last sarpanch elections when Ramji Gujjar won. However, after a fall-out between the two, and with the seat becoming reserved for women, the Thakur decided to put up his daughter-in-law as a candidate. Overall, there is a lot of discontent brewing in the village, even among those who voted the Thakur family to power, as it is said no development has taken place since the change of guard. Incomplete or no information regarding details of schemes and the fearful hold of the Thakur over its residents were highly perceptible.

Fast-Track and Laid-Back: Budania and Kidwana Panchayats (Jhunjhunu District)

Budania panchayat has been highlighted in the media as the first panchayat in Rajasthan which has put all its records online in a bid to move towards complete transparency. A perusal of the panchayat website (seen at the time of this study) showed that this claim was a bit exaggerated, yet the initiative itself was worthwhile exploring, if it could truly serve as an alternative model of transparency in the coming years. Budania lies 17 kms from its block headquarters Chirawa in Jhunjhunu district, one of the highest literate districts in Rajasthan bordering Haryana state. Budania panchayat had seen the same sarpanch for the last 40 years, until 2010, when the seat got reserved for an SC candidate. The village decided to put up Randhir Singh, a Jaipur-educated mainstream journalist by profession, who in his own words, has not only exposed a number of irregularities in public works in the state, but has also used the RTI Act himself in the process of doing so. He is also the mastermind behind the website.

The panchayat has three villages (Budania, Meghsagar and Haripura)– the largest being Budania. Around the main village are its inhabitants living in clusters called 'dhanis', usually organised along caste lines. The SC population in Budania panchayat as per the 2001 Census is 17.76%. A peculiarity about villages in this area is that it is home to a high number of ex-army and presently in the army servicemen, having its own implications on the income, educational level and mindsets of people living in this region.

In the search for the second panchayat, the following parameters were considered. Of the 7 blocks in Jhunjhunu district, Surajgarh and Jhunjhunu blocks were found to be closest in terms of population and social characteristics to Chirawa, eliminating the others. Jhunjhunu block was ruled out as it comprised the district headquarters and Surajgarh was preferred as it also shared the same tehsil headquarters as Chirawa (i.e, both Surajgarh and Chirawa blocks come under Chirawa tehsil). Once the block was decided, Kidwana panchayat in Surajgarh block was shortlisted as it had similar population, SC/ST population and socio-economic characteristics as Budania. The fact that the sarpanch here had also won on a reserved seat, was a youth and a teacher by profession (before contesting elections) made this panchayat ideal for a comparative study with Budania.

In total contrast to Budania, Kidwana panchayat has never seen the same sarpanch for more than five years. Yet, the present sarpanch Mahipal, a young teacher who fought and won the SC reserved seat was backed by the previous sarpanch, himself an ex-armyman and a veteran at politics. Significantly, the equation of the local political heavyweights with the sitting MLA from the region (from the Congress party) who has won this seat for the last 15 years, has, and continues to shape the contours of development in the panchayat. The fall-out of the ex-sarpanch Liaquat Ali Khan with the Congress seems to have further contributed to the adverse dynamics. Mahipal, the “novice” sarpanch, seen as aligned with the opposition party, appears to be a bit helpless in bringing funds to his panchayat for development; a fact most of the residents seem to be well aware of.

Socially speaking, the panchayat has a sizeable Muslim population (in the minority in terms of population) and residents from both communities affirm that they co-exist in harmony. The dominant divisive factor affecting development, if any, appear to be political alignments between the Congress and BJP aficionados within the panchayat.

In this scenario, there has been practically no effort or impetus at raising awareness about the RTI Act in this panchayat either by elected representatives or government officials or any outsiders. “When there is no expenditure, no development, what is the need for RTI?” quipped a panchayat resident. Other than some of the women in Parasnagar (the SC settlement of the panchayat), none of the villagers seemed interested in (or feared) questioning the status-quo.

Limitations of the Study

- ❖ Gaps in data (non-availability of records for earlier years) was the largest limitation of the study. In many public offices, data was available only for the last three years, sometimes even less. Data pertaining to the preceding years were inaccessible or not easily retrievable. In Jhunjhunu district Collectorate (ADM's office), the dealing officers were not particularly co-operative despite the ADM's own cooperation. This was in contrast to the behavior of officers in Rajsamand district collectorate and SP's office where there was total cooperation and the records were also easily available.
- ❖ During the field visit to Vijayapura, the sachiv of Vijayapura panchayat was on leave for a few days and it was only he who had access to the RTI applications file of the panchayat. After repeated requests and considerable delay, the information was made available through the sarpanch. In the Devgarh block office, the RTI applications files were not available for three years, and nor was an RTI register maintained.
- ❖ In the case of some public authorities, the PIOs were not in office after repeated visits, and no one else was willing to provide any information. In some other offices, the PIO was absent but the officer in charge of dealing with RTI applications (the APIO of sorts) was present and was used as a proxy to the PIO.
- ❖ In Jilola panchayat, interview with the sarpanch could not take place during the April field trip and she was not available again during a subsequent repeat visit to interview the ex-sarpanch. The sole RTI applicant from Jilola panchayat was also not available in the village during the visit. In both Devgarh and Amet, the S.D.O (sub-divisional officer) was not available and ration dealers in the respective panchayats were elusive.
- ❖ Instances of RTI users being harassed or intimidated or threatened on trying to use the RTI Act were not encountered in the panchayats chosen for the study. Because of this, the research has solely focused on the awareness aspect of RTI as defined initially. The main reason for this (other than in Vijayapura panchayat) seemed that awareness itself was close to nil so the question of trying to use the Act did not even arise.

The Research Findings

State of Awareness of the RTI Act –Who, What, How Much and Why

1. Spread - The RTI Act, however participatory it was in its making, has not reached a vast proportion of the common man in rural society in its implementation. While this low level of awareness was generally established in the NCPRI-RAAG study, the present micro-study of four panchayats gathered data on how many RTI applications were put in from residents of these panchayats at the village, block and district level offices. At each of these three tiers, as many public offices as possible were visited in the course of the field work, and data to the extent available was collated. **It emerged that Vijaypura panchayat aside, there was only one application from Jilola panchayat, Rajsamand district at any level and not a single application from Budania and Kidwana panchayats in Jhunjhunu district in any office at the panchayat, block or district in the last 5 years that been in force** (see Box 1 for details).

Box 1: RTI Applications from Rural Residents in Some Major Public Offices at the Panchayats, Blocks and Districts – 2005 to 2011*

RTI Applications From (Name of Panchayat)	Number of RTI Applications In (Offices at Different Tiers Of Governance#)					
		Panchayat	Block	Tehsil/ SDO	Collectorate	SP (Police)
	Vijaypura (Rajsamand)	29	8	0	2	2
	Jilola (Rajsamand)	1	0	0	0	0
	Budania (Jhunjhunu)	0	0	0	0	0
	Kidwana (Jhunjhunu)	0	0	0	0	0

* Data was not available for all offices for all five years. # Only main offices shown here. See Boxes 2,3,4 and 5 for others.

The first reaction of most government officers and elected representatives to the question of awareness about the RTI Act is that “everyone knows about it by now. People are very clever, not like what you think!” Significantly, this retort was more commonly heard in Jhunjhunu district, which is one of the top districts in Rajasthan on the parameter of education. Then confront them with some facts - how come there is not a single application in the last 5 years from Budania and Kidwana panchayats?

But then, they respond, you cannot derive the level of awareness from the number of applications alone. The reasoning they offer in support of this view takes the following course:

The state of suo-moto disclosure is so good that no one feels the need to apply under RTI.

Many people come asking for information verbally and this is provided to them verbally so what is the need for a written application.

One could summarise this ‘Official View’ as – “Everyone knows/ Everything is transparent, so people don’t need to even apply under the Act”

If this line of thinking is to be espoused, one can also argue that where there is a conscious effort at openness, or an RTI-friendly sarpanch, as in Vijayapura, there should a lower number of applications. But this is certainly not the case, as we have seen. In fact, one might even wonder if the reverse is true, i.e, if a positive correlation exists between a culture of openness and higher applications under RTI (although it was beyond the scope of this study to establish this).

The public’s views tread more along these lines:

- a. “What is this *suchna ka adhikar*? ***Kis cheez ki suchna?***”
- b. “Yes, we know about it, but how can we confront a power structure against which we are bound to lose?”
- c. “*Jisko kamana he kamane do.*”
- d. And then, there are those who say they felt no need to use it so far.

The ‘People’s View’ echoes – “We don’t know/we don’t want to know/we know but it wont get us anywhere”

There is evidently a huge gap between the official and people’s line of thinking which has been totally missed so far. To acknowledge that this gap exists, to impartially discern how much truth there is in both sides and to recognize where the gap is coming from is the first step towards evolving a meaningful and effective way to raising awareness.

While it is true that the number of applications alone cannot serve as an exact proxy to the level of awareness, this variable gives us a precise idea as to how many people who knew about the Act took a step further and actually put it to use. Barring the applications from

Vijaypura, we came up with the absurdly low figures of NIL in Budania and Kidwana and ONE in Jilola panchayat. This insignificant level of applications can only mean one of two things - either awareness is extremely low, or there are some major hurdles or factors that prevent people from using the RTI Act despite knowing about it.

2. Penetration and Depth of Awareness – Who knew, who didn't and how much do they know? Except in Vijaypura panchayat, **the labouring class** (those who go for wage labour within or outside their areas of residence) and **the unlettered** (with exceptions) do not know anything about the RTI Act. They have not even remotely heard of it and one can say a complete lack of awareness prevails among them.

'**Women**' as a category were strikingly unaware of the RTI Act, which also goes to explain why so few RTI users are from this gender. This was true even in Vijaypura panchayat, where awareness about NREGA and transparency provisions within the NREGA was high, but on provisions of the RTI Act was low.

On the other hand, it is pertinent to point here that when people interviewed were informed about right to information in the course of the study, *the strongest response or interest was articulated by those who were wage-workers and among them, the women.*

The social activist, those described by a witty villager as 'Without Work Busy', political heads (formal or informal) at the village level, their associates, government employees (like the teacher, the roadways employee, the ex-armyman) and a small section of the educated class know about "Suchna ka Adhikar." Their knowledge goes a little beyond just familiarity with the phrase. But even for a large proportion of the educated in the villages studied, *suchna ka adhikar* only rings a bell. Yes, they have heard/read about it somewhere but ask them to tell you more and they look askance, scratch their heads. Only few are able to coherently describe the entire process of applying for and obtaining information, or what really the RTI conceptually is.

Coming to Vijaypura panchayat, if we take the 29 applications that were filed in the panchayat office in last five years, it emerges that one-third (or ten) of the applications were put in by just two people and another 4 applications by two others. Thus half the applications came from just four people even in Vijaypura (**see Box 2 for details**). Boxes 3, 4 and 5 speak for the state of affairs in the remaining panchayats.

Box 2: Applications from Residents of Vijayapura Panchayat**2.1. At the Panchayat Office - Vijayapura**

Sl. No	Year of Application	Applicant Name	Topic of Application	Applied To
1.	2005	Arjunlal Salvi	Minutes of mini sachivalay meeting, attendance	Panchayat Office
2.	2005	Rekha Gopal Lalji Bhat	Ration Card of another person in the village	Panchayat Office
3.	2005	Prakash Chandra Salvi	All documents relating to Samudayik Bhavan built in Vijayapura	Panchayat Office
4.	2006	Prakash Chandra Salvi	Panchayat Quorum Meetings photocopies of minutes	Panchayat Office
5.	2006	Prakash Chandra Salvi	Name of Mukhiya and number of family members in ration card of another person in village	Panchayat Office
6.	2006	Mangilal Pemaram Salvi	Bill, voucher etc. of public hathai construction	Panchayat Office
7.	2006	Prakash Chandra Salvi	Photocopies of quorum meetings proceedings	Panchayat Office
8.	2006	Pukhraj Ramlal Rao	Plot details of Satyanarayan who has been allotted a plot in front of him	Panchayat Office
9.	2006	Pukhraj Ramlal Rao	Copy of patta of land allotted to him.	Panchayat Office
10.	2006	Jagdish Salvi	Copy of complaint made against Prakash Chandra	Panchayat Office
11.	2007	Jeevan	Copy of order converting land to abadi	Panchayat Office
12.	2007	Veeram Singh	Photocopy of gram sabha resolution	Panchayat Office
13.	2007	Veeram Singh	Not clear	Panchayat Office
14.	2008	Tara Devi	Details of ration distribution to non-BPL cardholders	Panchayat Office

15.	2008	Pahad Singh	Illegal encroachment-copy of complaint by villagers	Panchayat Office
16.	2008	Zarina Khan	Copy of patta of plot allotted to her husband in 1984	Panchayat Office
17.	2008	Chain Singh	Copy of muster rolls of anicut in village	Panchayat Office
18.	2008	Bhanwar Singh	Copy of report against him on patta issue	Panchayat Office
19.	2008	Poonam Singh Rawat	Copy of complaint and names of people who complained against him.	Panchayat Office
20.	2008	Chaganlal	Copy of complaint against him on road dispute.	Panchayat Office
21.	2008	Netaram Deeparam Salvi	Documents relating to land for <i>shikshakarmi</i> school	Panchayat Office
22.	2010	Arjunlal Salvi	Panchayat Cash Book photocopy	Panchayat Office
23.	2010	Arjunlal Salvi	List of private and self-employed shops, rent in Vijayapura	Panchayat Office
24.	2010	Arjunlal Salvi	Order to temporary gram sachiv, cheques issued by sachiv	Panchayat Office
25.	2010	Arjunlal Salvi	Photocopies of formats regarding job cards	Panchayat Office
26.	2010	Ratanlal Regar	Gram Sabha minutes	Panchayat Office
27.	2011	Ratanlal Regar	Rent receipts of 2 shops, decision of quorum	Panchayat Office
28.	2011	Arjunlal Salvi	Quorum meeting proceedings, action on resolutions taken	Panchayat Office
29.	2011	Girdhari Singh Rawat	MB, UC etc of pucca works, patta applied for in 2004, rent for shop	Panchayat Office

2.2.a. At Block Level Offices (Devgarh)*

Sl. No.	Year of Application	Name of Applicant	Topic of Application	Applied To
1.	2006	Sarpanch, Vijaypura	Records for social audit of drought works in 8 revenue villages	BDO, Devgarh
2.	2006	MKSS	All action taken on complaint by labour on payment of low wages	BDO, Devgarh
3.	2006	MKSS	Measurement of NREGA work by J.Ens	BDO, Devgarh
4.	2006	MKSS	Measurement of NREGA work by J.Ens., log book and TA Bills of all work in the whole block	BDO, Devgarh
5.	2006	MKSS	All records of development works for social audit in Vijaypura and Kalesariya panchayats	BDO, Devgarh
6.	2007 – No records were made available for this year from the BDO office			
7.	2008 – No records were made available for this year from the BDO office			
8.	2009 – No records were made available for this year from the BDO office			
9.	2010	Arjunlal Salvi	On <i>gram sewak</i> (Udayvir's) leave	BDO, Devgarh
10.	2010	Arjunlal Salvi	Electricity connection, demand notice, consumers etc.	BDO, Devgarh
11.	2011	Rajvir Prasad Salvi	Topic unclear	BDO, Devgarh

* This is not an exhaustive list, as there were data gaps that could not be filled due to files not being accessible for certain years at the block.

Other Block Offices -

- ❖ BEO's Office – About 20 applications from whole block in 5 years. **No applications from Vijayapura.**
- ❖ CDPO's Office – PIO on leave. LS informed us that there were 3-4 applications from whole block in last 5 years. **None from Vijayapura.**
- ❖ Senior Secondary School, Devgarh Block – Only 1-2 applications. **None from Vijayapura**
- ❖ Government Hospital, Devgarh - Data available for last two years only. Only 1 application, **not from Vijayapura**

2.3. At the District Level Offices (Rajsamand)

Sl. No	Year of application	Name of Applicant	Topic of Application	Applied To
1.	2007	Kaluram Rooplal Salvi (sarpanch)	All action taken on a certain FIR	ASP Office, Rajsamand
2.	2007	Kaluram Rooplal Salvi (sarpanch)	Details of beneficiaries of Janani Suraksha Kendra	CHC, Devgarh
3.	2008	Ghisaram Salvi (ward panch)	All papers relating to action taken on earlier complaint against four residents by villagers	ADM Office, Rajsamand
4.	2008	Kaluram Sarpanch	Information about police chowki Kamlighat, Vijayapura	Revenue Department (ADM Office)
5.	2011	Sarpanch, Vijayapura	Information on Satyanarayan Mewada's <i>patta</i>	ASP Office, Rajsamand

Box 3: RTI Applications from Residents of Jilola Panchayat**3.1. At Panchayat Level Offices**

There was only **ONE** RTI Application at the Jilola Panchayat Office. The applicant was Vidya Garg, who had asked for photocopies of the gram sabha proceedings which took place on 21.01.2006 on selection of anganwadi worker in Jilola Panchayat.

3.2. At Block Level Offices (Amet)

- ❖ **BDO Office Amet:** Totally 18 RTI applications at the office from 2005-2011. **None from Jilola.**
- ❖ **Tehsil Office Amet:** No applications from 2005-2009. Two in 2010 and 1 in 2011. **None from Jilola.**
- ❖ **Electricity Department, Amet:** **No applications from Jilola**
- ❖ **SDO office, Amet:** Nil applications.
- ❖ **Block Chief Medical Health Officer:** Nil Applications
- ❖ **BEO Office, Amet:** Only 1 application forwarded from DEO. **None from Jilola.**
- ❖ **Executive Engineer, PWD:** Did not have data for all years. Inspected file, **no applications from Jilola.**

3.3. At District Level Offices (Rajsamand)

- ❖ **ASP's Office:** None from Jilola.
- ❖ **District Collectorate (ADM's office):** None from Jilola
- ❖ **DSO's Office:** The DSO Office in Rajsamand did not have a separate RTI register. A file of RTI applications from 2009 onwards and a list of applications from the Letter Receipt register had to be relied upon. In all, around 13 applications (including those forwarded from various offices but excluding appeals) were noted. **There were no applications from Jilola or for that matter, from Vijayapura.**

Box 4: RTI Applications from Residents of Budania Panchayat

Offices Visited and RTI Applications/ Records Inspected -

- ❖ **At the Panchayat Level:** Panchayat Office, Patwari, Anganwadi
- ❖ **At the Block/Tehsil level:** BDO, Chirawa block, Tehsildar, Chirawa tehsil, S.D.O, Chirawa sub-division, PWD, Chirawa block, A.En., P.H.E.D, Chirawa block, Junior Technical Assistant, NREGA, Chirawa
- ❖ **At the District Level:** District Collectorate, Jhunjhunu, SP's Office, DSO Office (records were not available on day of visit), CEO's office (could not meet).

No Applications from Budania Panchayat in any of these offices from available records

Box 5: RTI Applications from Residents of Kidwana Panchayat

Offices Visited and RTI Applications/ Records Inspected -

- ❖ **At the Panchayat Level:** Sachiv, Kidwana panchayat, Ration dealer Kidwana, Patwari, Kidwana, Anganwadi worker, Kidwana
- ❖ **At the Block/Tehsil level:** B.D.O, Surajgarh, IInd B.E.E.O, Surajgarh, Medical Officer, PHC, Kidwana, Tehsildar, Chirawa tehsil, S.D.O, Chirawa sub-division.
- ❖ **At the District Level:** District Collectorate, Jhunjhunu, SP's Office, DSO Office (records were not available on day of visit), CEO's office (could not meet).

No Applications from Kidwana Panchayat in any of these offices from available records

3. Leading 'conditions' in determining awareness - *In the absence of any conscious efforts to promote awareness*, a few factors appear to play a key role in determining the contours of awareness. "Education" was not a necessary condition but being educated beyond an elementary level certainly increased the chances of knowing about the RTI Act. Among the educated class, professionally speaking, being a government employee or a teacher (public or private) also greatly increased the probability that the person knew about the law.

Other than these obvious categories, it was also clear that no matter what caste, class, educational or professional background, a rural resident with a keen interest in 'politics' at any level, political association or connection was likely to have heard of the RTI Act or tried to use it. These include the set of people who hobnobbed with the sarpanch or his rivals, agents of political parties at the grassroots level, those with higher political connections (i.e, close to the MLA or MP), a few socially conscious (even if politically unaffiliated) and those who made it their business to know about everything ('without-work-busy' type).

Thus, it was people with some social, financial or political **advantage**, or those associated with any hub of power, who were most likely to know about the RTI Act. The source of this advantage or power could be either education, or employment in a certain sector, or financial, or political, i.e., association with any political group, NGO or *sangathan*. Conversely, those disadvantaged in society, i.e, those who lacked any link to any source of power or empowerment were least likely to know about the RTI Act.

In a major finding of this study, it emerged that, without a conscious and sustained intervention, awareness about the RTI Act tends to flow along already established hierarchies. Inevitably, and rather paradoxically, awareness – and use – of the RTI Act is more likely to vest in those pockets of power that the Act itself seeks to destroy.

4. Conceptualization about RTI – And the Link between “Awareness” and “Use” - Amongst those who claimed to know about the RTI, it is important to see what they understood its essence to be, or how they conceived of it as being useful in their practical lives. For those at the bottom, the question of using RTI when faced with any problem or lack of information linked to their lives or livelihoods did not even arise, as they were simply unaware of it. ‘Respect’ for the overt and unsaid hierarchies play a strong role in the psyche of people living in rural areas. Every person interviewed who was not himself/herself in a position of power said that the initial step they took when faced with a problem concerning the government (such as water, roads, drainage, ration etc.) was to speak to the *sarpanch* or ward *panch*. In some cases, they would go to the local head of their group or clan who in turn would use his “approach.” The better educated would try to meet the concerned officer himself, or use “higher” connections. The question of using RTI at the first instance almost never came into their heads (unless they were activists or associated with the MKSS). On the other hand, it appeared that the “benefits” of using RTI were immediately recognized when it was for eliciting information about rival groups, or where a dispute was involved (say regarding land or BPL status). The use of RTI to obtain records such as muster rolls, bills, vouchers, etc. about any development work in the village was done almost exclusively by social activists or by people harbouring political rivalries.

Thus, while being educated had a direct bearing on being aware about the RTI Act, being educated *and* aware alone did not necessarily translate into *using* the RTI Act. For this, another crucial ingredient became a pre-requisite. To actually use the Act, people needed to perceive that the effort of using this Act could actually bring a concrete benefit – especially where obtaining information was not an end in itself.

Conversely, even if one was not educated but was aware and perceived this link, the chances that they have used or would use the Act was higher.

At this stage, one *more* pre-condition became important to translate

awareness into use. For those at the bottom, who usually confronted a hostile power structure, the strongest deterrent that came between awareness and use was **Fear**. It is hard to miss this sentiment couched in comments widely aired during the interviews (and as mentioned in sub-section VII.1.1). How does one deal with this? We introduce a law to make information open and importantly, *equally* open to all and now we have to introduce a law to protect information seekers. Why? And if that doesn't work will we be introducing a third law to enforce the second? All legislation relies on a delivery mechanism that ensures it is implemented in letter and spirit. In the RTI Act, credible 'punishments' were supposed to provide the strong 'stick' to ensure that information will be provided. That is, punitive provisions in the Act put a pressure on *information-givers* to adhere. It also emphasizes on *suo-moto* disclosures although without any strong penalties for not doing so. Both these address, so to speak, the "supply-side" of information. But nothing in the Act strengthens the hands of the *information-seekers* or actually recognizes that there are obstructive factors at work which do not let some of them even reach the stage of applying under the Act. The in-built presumption is that, being a law under the Constitution it would equally apply to every individual automatically and everyone will be able to use it. Nothing could be further from the truth than this in reality.

To solve the problem of use, one has to confront the larger problem of exploitation in our society and why it continues. Ignore this, and no amount of legislation will be able to correct this anomaly. In exceptional cases where people have displayed extraordinary strength, the RTI Act can sometimes prove to be a magic wand which levels the powerless and powerful *but in a vast majority of cases, it is not sufficient in itself to encourage the rural poor or exploited to confront what is seen as an insurmountable power structure.*

The brilliance of the RTI Act—in that it puts power in the hands of every individual - is being offset in large part by the disturbing fact that people, who have been conditioned to believe for years that actual power never vests with them but in someone more powerful, are not even able to comprehend that they have this power, and what they can do with it.

A less strong but nevertheless real deterrent proves to be the 'cost' of applying under the RTI Act. This includes both the financial and perceived costs such as the physical effort of going to the block or district level office, the hesitation to speak to anyone in a seat of power, the reluctance to be meted out with undignified treatment or

the apprehension that one would go all the way with no guarantee that the application would get accepted, coming on top of a loss of the day's wage or work. Although the postal option takes care of some of these problems, obtaining postal orders and sending by registered post also implies a certain financial cost, is not always a smooth procedure and holds the chance that the application returns undelivered. "The minimum charge for mail sent through registered A.D is Rs 35. A postal order costs Rs 11 and is not always easily available in villages. A total cost of almost Rs. 50 to send an RTI application, when the post may get returned at the end is a big disincentive to a poor person," explains an RTI user.

A third "obstacle" in the use of RTI Act lies in the minds of people themselves. When explained about the RTI, some of those interviewed expressed that they simply could not wait and would "rather pay a bribe for 'speed service' than go through all that trouble." This requires a huge attitudinal change in the people but also relates to the systemic failure which conditions them to think in a certain way.

Finally, a word on "harassing" applications here. Across-the-board in government offices visited at any level, the common sentiment echoed by many dealing officers and clerks was "we get bombarded by applications. At this rate, we have to stop doing all other work and deal only with RTI applications." Or "this is an Act for trouble-makers. People with an agenda to harass us are making maximum use of the Act."

The figures collected from various offices did not bear out the first set of sentiments. For example, the highest number of applications in a year (for which data is available) from the District Collectorate, Jhunjhunu (ADM's office) was 233 in year 2010, which is not even an average of one application a day; while it was much lower at 82 in Rajsamand (an average of one application every four days) in the same year. The highest number of applications per annum at the SP's office (Rajsamand) was 170. Applications at the block level offices were far less, averaging 4-5 applications a year, at the maximum. Other than Vijayapura panchayat, the average applications per year at the panchayat office was Zero, and in Vijayapura, it was an average of 6 applications a year.

On the second charge, further probing revealed that applicants seeking voluminous information were few and far between, moreover, **the rural poor or exploited were definitely not amongst**

them. As admitted by the dealing clerks themselves, the ‘harassers’ most likely belonged to the government sector itself (employees or ex-employees) or were educated and out to settle political or personal scores. Secondly, the lack of training for dealing officers and poor record management systems in government offices also led to a sense of frustration when faced with applications demanding voluminous information.

5. Channels of awareness - What were the most common channels through which knowledge about RTI reached rural residents? Other than the political representatives, those who knew about the RTI Act had mainly read about it in the newspapers. Few mentioned television or had come to know of it through word of mouth. Some of the more politically aware recalled examples of how someone they knew had used the RTI Act but **none except elected representatives and field level officers** consciously recalled any dissemination by the government as a source of information about the RTI.

6. Why is Awareness So Unequal? Simply because we are trying to introduce an equal law (in the eyes of the Constitution) on an inherently unequal society. We delude ourselves into believing that in a “representative” democracy everyone has a voice, whereas in reality this system itself legitimizes inequalities and creates hierarchies. Any instrument of justice introduced into such a given system is bound to play into the hands of the powerful; those at the top of the pyramid and completely bypass those at the bottom. ‘Grassroots’ democracy of the type implemented in India (in the name of *panchayati raj*) further determines the contours of awareness at the village level, actually reinforcing the hierarchical structure already in place.

Additionally, the nature of information is such that it is not in the interest of those in a position of power to allow those below to acquire any sort of awareness that will endanger their position. In all logic, the “trickle-down approach” simply does not and cannot work when one is talking of a power-threatening legislation as the right to information. **This is why the government machinery cannot be relied upon to deliver awareness about the RTI Act to its citizens.** It is not the same as creating awareness about eating eggs, or breastfeeding, or the ills of smoking.

It is also not in the interest of anyone above someone in a hierarchy to aid that person to become empowered enough to disturb the hierarchy. **This is also why any one who commands any power**

over others at the micro-level (in a village setting) cannot be relied upon to create awareness about the RTI Act. The farmer who has taken away the land of his tiller or pays him an exploitative wage, is not going to educate labourers about how to obtain land records, or information about minimum wages. The corrupt sarpanch or sachiv is not going to help villagers unearth corruption in works executed by him, although his rivals might, if only to come into that same position of power themselves.

The answers as to both why there is such low awareness and why the existing awareness is only in a few people's hands can be crystallized from this basic "preservation instinct" that a hierarchical system such as ours actually sanctions and endorses.

What we have here is a structural problem, which is hastily dismissed by all as beyond the realm of feasible change. A serious broad-based debate on an alternative structure of governance, or what can break this hierarchical, exploitative superstructure has not even taken seed. Unfortunately, these are tough questions that one may not find answers to in a lifetime, and hence are seen as better swept under the carpet. But it is also in these that the lasting solutions are likely to lie.

If one proceeds on the premise that the inherent inequalities in our system will remain unaddressed, (as it is now) what we are left with is tinkering around the present system that can only, at best, offer patchwork solutions which may mitigate, but never actually strike at the roots of the problem of lack of awareness.

VII. 2. Attempts to Create Awareness – An Assessment

VII.2.a. The Government Hand

So far, efforts at creating awareness by the government have been entirely top-down. Not only this, they have been entirely unimaginative. Here, two levels of awareness have to be kept in mind. At the very basic level, people first have to be made aware that such an Act exists, and what its essence is. Side by side, a higher level of awareness needs to be kicked in - by informing people about the nitty-gritties of how to apply under the Act and the procedures involved.

The only dissemination done regarding basic awareness creation at the village level is text-heavy wall paintings on RTI which are

often entirely lost in similar publicity for a gamut of government schemes and government/non-governmental campaigns. A completely uninformative poster which blandly reads nothing else but '*adhik jankari keliye lok suchna adikari se sampark karen*' (for more information, contact your PIO) has been recently printed for dissemination by the government of Rajasthan. No doubt, such posters are likely to fox those in the dark even further or maybe, it was designed to end up raising curiosity levels of citizens!

At the second level, three distinct types of attempts could be delineated:

1. Display boards – Mandatory under Section 4 of the RTI Act are boards providing information regarding the name of the public office, PIO, application fees, inspection and photocopying fees. Also important are a physical display of information regarding the services, rules, procedures, responsible officers, etc. concerning that particular office or department.

It was noticed that display boards giving information about the PIO etc. were largely in place at a) the gram panchayat office b) the BDO's office and c) district level offices (Collectorate, SP, DSO etc.) in the study area in both districts. Even here, some of these boards did not carry the names of the first and second appellate authorities. On the whole, compliance with regard to display boards was in a better state in the areas visited in Rajsamand district than Jhunjhunu district. Within Rajsamand, Vijayapura panchayat carried extensive information of all panchayat related schemes and beneficiaries on the walls whereas the RTI display boards in block level offices in Amet block were more prominent than in Devgarh. In Jhunjhunu, the state of display boards fared much better in Kidwana than Budania. But no matter which panchayat or district, five years since the Act's implementation, many of the *other* public offices within a panchayat—the anganwadi, school, ration shop, patwari, health centre—did not have any RTI display boards or information on where one should apply regarding that particular area of governance. (The particularly pathetic in ration shops in all panchayats). In some offices, it was said that the display board had flown away in the wind, or removed during repair or construction of a wall!

Detailed display boards on information regarding each and every office's **functions** were a mixed affair. For instance, one would spot excellent disclosures at the gram panchayat office in Vijayapura but information scrawled on a dilapidated wall of an *ananganwadi*

kendra within the panchayat. On the other hand, while such detailed information may not be visible in the panchayat office in Kidwana (Jhunjhunu), the level of disclosure at the anganwadis were far more systematic.

A perusal of the circulars from the Administration Reforms Department, Government of Rajasthan, which is the nodal department for implementation of RTI in the state, reflects the far-from-satisfactory condition of *suo-moto* disclosure even in departments within the Secretariat. Repeated reminders to comply to Section 4 are still being periodically sent out by the department. As recently as May 2010 (five years into the Act's implementation), the Principal Secretary has sent a circular to all department heads stating "Till date, not a single department of the state government has complied in making the information public at least on the departmental website." In the rural context, boards informing applicants the name and designation of the PIO and so on are a basic minimum to ensure that people do not have to face undue harassment finding out the procedures and the PIO. But disclosure through these boards also needs to be seen in the following light.

- Firstly, impressions of overall awareness in the panchayats studied points to the fact that *suo-moto* disclosure through such boards do not, by themselves, ensure a conceptual understanding about the RTI Act. A villager first has to understand the significance of RTI at its core. He also needs to perceive how using the RTI will bring him/her a concrete benefit or solve his/her family's fundamental problems. And when we are talking about those at the bottom in a village setting, the government or anybody trying to create such an awareness needs to develop an entirely empathetic frame.

Putting up only display boards or communicating drab information without kindling a grounded awareness on RTI, especially among the illiterate and labouring classes, is unlikely to strike a chord with the rural poor. For a person to look at the display board and find that information interesting, he first needs to have a sense of what is being talked about, and how it will prove useful to him in tangible terms.

Thus, while government offices have been criticized by activists for tardy implementation of Section 4, especially putting up of boards, I would say it needs to go a step further back and begin at the basics, i.e, look at and give a thrust to innovative

ways of creating awareness about **the essence of the Right to Information**. The most commonsensical way would be to introduce RTI to each and every development scheme in all its publicity campaigns.

Secondly, given that boards or wall paintings have a greater visibility and chance to be noticed even by the illiterate, compared to manuals or citizens charters that are regarded a useful source of information to the educated, there is scope for more citizen-friendly information to be put up on these boards.

For instance, in none of the villages visited was there any **one** place/board at the village level where a villager can get information on where exactly he has to go to apply under RTI **concerning a range of offices**. For example, it is not clear at all to a common villager that any RTI application concerning anganwadis cannot be handed to the anganwadi worker in the village but to the CDPO at the block level, or that an application regarding police cannot be given at the *thana* but only at the ASP's office in the district headquarters. A compilation in one single board with three simple details - name of office, name/designation of PIO or APIO and designation of first appellate authority – for a range of public authorities from panchayat to district where the public have the most common interface would prove useful and also fill the gaps for those wanting to apply under the RTI Act in any of these offices.

2. Dissemination at the time of Camps – A recent campaign by the state government called “**Prashasan Gaon ke Sang**” saw field level functionaries share some information about RTI with rural residents along with hearing out their problems. Other than this, any new information on RTI is exchanged amongst the lower rungs of bureaucracy in monthly or fortnightly meetings at the panchayat or block.

3. Trainings of Government Officers and Elected Representatives – As a part of raising awareness among the information givers, officers at the block and district level in the area of study stated that they had received training in Jaipur, Ajmer or other places specifically on RTI or as part of general training workshops. According to the APIO at Amet block, a one-day training on RTI was given for the first time to all *sarpanches* and *sachivs* for the first time since the Act was passed in March 2011. However, in many of the offices the

dealing officers or clerks (who actually dealt with the application – preparing the replies etc.) said they had not received any training and many times were in a dilemma as to whether information on certain queries should be provided or not under RTI. This was particularly true in the police department (ASP office). There has only been one training conducted at Jaipur for officers by the government since the passage of the Act.

Two observations in this regard could be made. The ‘mindset’ of the lower level bureaucracy which actually deals with the RTI applications, barring a few exceptions, tends to remain hostile to those demanding information. Top-down training on RTI presently followed has to necessarily reach the dealing officers actually processing the information. Without this, their own lack of information leads to a build-up of unnecessary frustration. Secondly, trainings also need to emphasise on a mindset change amongst officers and clerks right till the bottom, looking objectively and dispassionately at the RTI regime. Often, a hype is created around “harassing” applications and applicants are vilified. Although they are a negligible proportion of overall applications, it has become a favorite whipping boy, used to promote hostility against all applicants rather than genuinely trying to move towards an open regime.

4. Setting up Dedicated RTI Cells – There has been talk of forming dedicated RTI cells in certain public office through official circulars of the state government (dated 8.6.2010 and thereafter). These cells have been planned at the Secretariat, District (Collectorate) and (Sub-division) SDO levels. The circular states that the RTI cells should comprise three persons other than the PIO and APIO. Their work is to monitor the Act’s implementation and submit a quarterly report to the Administrative Reforms department. It is not clear who these 3 persons will be.

On the whole, the idea of monitoring officers within one’s own department is illogical. There has to be a separation of implementing and monitoring authorities. Secondly, the choice of the cell members is likely to pose a problem as the PIO and APIO are usually the heads of that particular office and any member of a team working under them is unlikely to raise any issues, however valid, that could go against his/her own boss. Thirdly, the ground reality is that most offices are understaffed (or under-efficiently run). Hence if the nomenclature is ‘dedicated’ but the officers are not, that is, the existing officers have to take on yet another new role in addition

to their regular work, the chances are they will not take the former seriously. Thus, the logic behind setting up such cells on lines of the proposed structure is questionable.

VII.2.b. The MKSS Paradigm

A group of people performing theatre, rending the air with inspiring slogans, signing satirical songs on corruption and violation of labourers' rights weaving through villages on foot or by truck is not an uncommon sight in the scorching hot summer months in central Rajasthan, year after year. Every year, as a run up to the May Mela (celebrated in Bhim on May 1 - Mazdoor Diwas) members of the MKSS embark on a fortnight-long padyatra to interact with, inform and facilitate an exchange of ideas on matters relating to governance with villagers residing in an area spanning Bhim and Devgarh tehsils in Rajsamand as well as parts of adjacent districts (Ajmer, Bhilwara, Pali etc.).

In these and other padyatras that take place around the year, pamphlets on workers' rights under the MGNREGA and RTI Acts are prepared and distributed. Through informal interactions, day-to-day governance issues touching the villagers' lives (rations not available, teachers not coming to school, low wages, etc.) are elicited from the residents. Specific complaints regarding the administration are taken up and followed upon by the *sangathan* members. During this interface villagers are also informed about the Suchna Kendra in Bhim (**see below for details**).

Through their *melas*, rallies, *dharnas*, *jan sunwais* and *padyatras*, the MKSS 'connect' with the rural poor on their daily issues on entering a village, even if for the first time, is unmistakable. The integration of local forms of communication, inculcation of humor and satire and emphasis on going to the poorer parts of any village and addressing labourers and women upfront on problems that constantly confront them are all important strategies that directly contribute to this connect.

The Suchna Kendra, Bhim

The Suchna Kendra in Bhim was started in 2006, soon after the passage of the national RTI Act. It was planned in six blocks of four districts where the MKSS has an active presence– Jawaja (Ajmer), Raipur (Pali), Bhim, Devgarh (Rajsamand) and Mandal, Asind (Bhilwara). The most active of them, the Suchna Kendra in Bhim, was running full time six days a week but since recently, due to manpower shortage; it does not consistently run the entire week. Daulatraj Nagoda, an Asind-based lawyer, who has been volunteering to provide his services at the Kendra once a week since 2006 is a key figure at the Suchna Kendra. “When MKSS members and volunteers go on *padyatras* or organize a *mela* or rally, people come up and speak of their problems. We try to sort out these problems as far as possible then and there and also give them the reference of the Suchna Kendra where immediate resolution is not possible. Thus, publicity about the Suchna Kendra has solely been through word of mouth.” he explains.

“When a person comes to the Suchna Kendra, we first hear out the whole problem in detail. We then decide whether an RTI application is warranted or not, or if any other kind of complaint needs to be drafted. For example, drafting of cases, revenue-related complaints, *lokayukta* complaints and so on. If it is decided that an RTI application is in order then we help in drafting the questions, but we encourage the applicants to file the applications on their own. In case they face problems filing the application in person, we also inform them the procedure of sending it by post,” elaborates Daulatraj.

The Kendra has not maintained a record of how many applications they have helped drafting or how many complaints have been resolved. However, Daulatraj avers that there must have been around 2500 different applications filed in the last five years through the Kendra.

The MKSS paradigm to create awareness and provide a support structure which can meaningfully help rural residents to clear development bottlenecks by using the RTI Act is built on three facets along a continuum – (a) creation of interest and basic awareness on RTI through imaginative and earthy modes of communication by “going to the people” (b) a system of referral to the Suchna Kendra, an office with a permanent physical presence so that people can go to it whenever a need arises and (c) maintaining pressure on government to comply with provisions of the RTI Act as well as advocacy with the local/state/national government depending on the issue at hand.

While such an approach has immense potential in empowering people through awareness and direct action, in reality, some shortcomings were observed in its execution, specifically with respect to the right to information:

- The padyatras, rallies, etc. organised by the MKSS take up plenty of causes, of which a predominant focus has remained the livelihood and minimum wage issue. This is especially true of the last 5-6 years with the passing of the MGNREGA at the same time as the RTI Act - transparency in muster rolls, development accounts of NREGA works and honouring of minimum wages have been given a major thrust in these public interactions. The explanation as to how corruption happens, how obtaining official records could counter it, the need for transparency and the social audit process through the lens of NREGA is immediately grasped by a wage-worker as it most closely relates to his survival. But on the flip side, the cross-cutting uses of RTI beyond wages and livelihoods such as in education, health, child care, PDS probably gets drowned in the overarching importance of the NREGA. This was seen even in Vijayapura panchayat, which has had an MKSS *sarpanch* for two terms in succession. A great deal of emphasis has been placed on transparency in NREGA works, suo-moto disclosure through wall paintings and display boards. The result: a high level of awareness and mobilization has rallied around the NREGA, minimum wages, and transparency related to it. But a process of widespread empowerment among the people specifically through awareness about the RTI Act and its myriad uses is not highly apparent.

For instance - in conversations with villagers, four major issues seemed to concern the residents of Vijayapura. Drinking water supply, low teacher: student ratio in schools, complaints about the PDS dealer and constant tussles on land (either amidst the villagers, encroachments on *charagah* land or attempts by the Nagar Palika to usurp the panchayat's land). Many struggles have been staged on the issue of land by the villagers and complaints made on the PDS dealer, etc.. However, it is not apparent that RTI has been used to solve the issues at hand.

- As we had earlier seen, a bulk of the RTI applications at the Vijayapura panchayat office in the last five years revolved around obtaining copies of land documents or minutes of meetings or muster rolls, etc. A second related observation – that applications at higher levels offices come mainly from activists asking for

information relating to development works for the purpose of social audit – implies that they take up issues on behalf of the whole panchayat. The downside of this is, an increase in the use of RTI amongst the common (*non-sangathan*) public from Vijayapura over the years is not evident. Much of this may be due to the fact that the *sarpanch*, with the backing of no less than the group at the forefront of the national right to information movement, is able to dialogue with the administration or try to resolve people's problems minimizing the need for RTI applications. However, even if this is the case, more work could be done to equip people with a tool for posterity, so that this awareness reaches each and every person in the panchayat and such a widespread empowerment remains with the people no matter how the political climate may change.

- Another pertinent reason for the lower focus on RTI in Vijayapura compared to what is possible, links to the tricky and sometimes frustrating equation between the elected representative (in this case, one who is pro-transparency) and the administrative machinery at the panchayat level. In the short field visit undertaken, it was amply clear that the *sachiv* and the *rozgar sahayak* were not in any mood to cooperate. According to Kaluram, he ends up doing what should actually be the responsibility of the *rozgar sahayak* (under NREGA), such as taking applications for work, getting muster rolls from the block, going to the worksites, etc. In fact, the *rozgar sahayak* had been removed from his post for irregularities in his work but had managed to get a high court stay and resumed duty after a gap. With the NREGA administrative work taking up a lot of time and energy, one is not able to devote sufficient time for RTI awareness, admits Kaluram.
- Interspersing *padyatras* or *melas* that focus on transparency in all sources and uses of public money **other than** the NREGA (in addition to NREGA-centric yatras) could probably help in creating a greater, broad-based awareness that does justice to the sweeping scope of the RTI.
- The interactions in villages and issues emerging in these fora need to be taken forward with a consistent follow-up, which in turn requires a sizeable number of dedicated, full-time manpower. For example, at the Suchna Kendra, Daulatraj suggests that it should be open for all seven days, so that more people can benefit from its services. He also feels there should be one more person to assist him in writing so that they could work more efficiently and resolve a greater number of problems.

- There are no shortcuts to create true awareness about the RTI Act amongst the public. In the generation of interest on the RTI Act, the *modus operandi* of the *padyatra* adopted by the MKSS are an archetype; perhaps the only way so far of effectively taking the message of accountability down to the last man in the rural society. But broad-basing this, sustaining the interest and being there to follow-up till the point people have acquired a full-blown awareness is a process which requires an organized support structure and adequate man (or woman) power in place. The existing Suchna Kendras, if fully manned, could perform their stated role far more effectively, and if there are people, the *suchna kendras* can be replicated on a larger scale. Another way, suggested by Daulatraj, is to link Suchna Kendras to the MGNREGA labour unions.

VII.2.c. The Carrot and The Stick – Attempts by Randhir Singh, Sarpanch, Budania Panchayat

While Randhir Singh, sarpanch of Budania and journalist by profession himself admits to exposing a number of irregularities in public works in the state using the RTI Act, his approach to transparency in his own panchayat is modeled along slightly different lines. Rather than making people aware about or encouraging them to actively use the RTI Act, he believes in strong suo-moto disclosure combined with a proposal of live monitoring of public authorities under his domain. And in implementing this strategy, he sees technology as playing a major role.

One of the first acts of the newly elected sarpanch was to set up a panchayat website on which, as publicly stated by him, all records would be put online.

In the next phase, he has planned (and recently implemented) live recording with CCTVs in about 20 government offices at the panchayat level – schools, anganwadi kendras, ayurvedic chikitsalay, ration shop, patwari bhawan and so on – which will be also loaded on to the website live.

He also proposes regular updates through mobile phones and registration of complaints regarding various government departments through setting up a call centre.

While these can be seen as interesting and innovative steps towards transparency, the important thing to understand is whether and how such an initiative will bring about in a sustained

manner. a) accountability i.e, better and more honest expenditure of public money by elected representatives and government functionaries and b) empowerment of residents through higher awareness at the individual level.

The following observations were made on the basis of wide-ranging interviews of individual residents, government functionaries and elected representatives -

- When last viewed, the website itself provided minimum information on programmes, schemes, etc –and the level of detail was far from desirable. For example, even overall figures on how much funds are available under NREGA or other schemes (TFC, SFC etc) were not put on the website. The list of NREGA workers who were provided 100 days of employment pertained to 2008-09 and 2009-10, before the present sarpanch took over. In fact, many villagers complained about the low number of NREGA works and hence employment, after he had taken over. This was confirmed by the sarpanch himself, but he attributed it to the Rajiv Gandhi Seva Kendra getting held up (as more funds under NREGA would be released only once this was built. In Budania, there were delays in building due to land problems). The fact remains that few villagers knew the actual reason for low number of NREGA works in 2010-11, pointing to information gaps. On the website, the sarpanch explained, he was awaiting completion of the Rajiv Gandhi Seva Kendra so that someone could be employed to update the website. This remains to be seen (Just as this report is being written the website is no longer available. This could be because of maintenance and updating of the website with live streaming of all offices connected with CCTVs).
- The sarpanch sees the website as going beyond the Right to Information Act – his idea is, by providing all records suo-moto online, there will be no need for anyone to use RTI Act. He also uses this to justify why there has not been a single application under RTI in/from his panchayat.

This reasoning proves problematic on the ground for the following reasons:

- Awareness within the village about the website itself was low, as barring the youth residents of Budania, no one in the panchayat had seen the website. Sure, many people had heard the word 'website', but with little clarity as to what it meant. To quote a

village elder when asked if he knew about the website, he retorted - “*yeh ‘website’ kya hein – gay hein, ya bhains hein, humen malum nahi*” (what is this ‘website’ – is it a cow or a buffalo, we don’t know). The sarpanch says he plans to address this by showing people about the website on projector. That familiarity with newer technologies will increase and spread with time even in rural hinterlands is in no doubt. Nevertheless, what was interesting to note was that the few youth residents spoken to mechanically repeated the sentence “*panchayat ki sabhi records online hein*” - they were completely unable to critically point out how relevant was the information put on the website, or where it fell short etc. from a transparency point of view.

- Right to Information is not only about opening up expenditure or employment figures to scrutiny, it is also about procedures, rules, decision making processes and ultimately, facilitating an environment where open, fearless, actual verification of the use of public money and power vested in the hands of public representatives and the government machinery can be done by any person. In this regard, information on the website, however comprehensive, cannot be exhaustive and there will always be a scope for people to use the RTI Act.
- Even if the website and openness of panchayat records could be used to reason out why there are no RTI applications at the panchayat level, this does not explain away why there is not a single application from Budania at higher levels i.e, public offices visited at the block, tehsil or district.

Randhir Singh’s emphasis on suo-moto disclosure through IT could have been construed as a pioneering initiative provided it was coupled with all other facets required to bring in real empowerment amongst the people for bringing public accountability, but this is where it falls short.

In his construction of transparency

- The website is largely seen as his initiative and not a people-owned process, so the right to information here is not perceived (among the people) as a people’s right, but something which the *sarpanch* is ‘giving’.
- He clearly does not want to promote a confrontationalist line to ensure transparency in his own panchayat by encouraging people to use the RTI Act. He justifies this by saying that anyway

all records are online or open to public scrutiny so anyone is free to ask for any information (verbally), or anyone can complain. However, this implies a certain passivity from the people's side – they can ask, complain, and have to wait for an answer which may or may not be enforceable. In other words, by not encouraging people to ask for **written** information, or physical photocopies of public documents, he chooses to retain some discretion (and hence dependence) as to a) what he can put on the website and b) how much can be revealed verbally and what sanctity this verbal/website information would have. Significantly, *by playing down the right to **written** information, this approach avoids the fixing of accountability.*

- The sarpanch opines that the RTI Act is being used in large measure by people who do '*netagiri*'. Nevertheless, he himself has used-and experienced the power of RTI Act in checking corruption. What he remains less convinced of is the need to broadbase awareness among the common people about the RTI Act.

The Budania model can thus be seen as a fragmented approach. Putting information on the website (the carrot) remains at the discretion of the information-giver while the live recording of government offices through CCTVs (the stick) appeals to a system of threat and punishment. The latter can indeed become an effective monitoring tool which is likely to improve performance of the officers while on duty. But on the other hand, the emphasis on website alone strongly misses the much-needed motivation and thrust to raise awareness about the RTI among the socially and economically vulnerable sections in the panchayat.

VII.3. Looking Ahead: Setting an Agenda

We have seen how the largest glitch in the unrestrained flow of information in a representative democracy is inherently in-built in the system. So now we have a large gaping hole where awareness about the RTI Act is stuck in pockets and one has to figure out how this awareness can be extended beyond those who are already in a position to get it. We have also had a glimpse at some of the efforts by governmental and non-governmental channels in creating awareness in the study area, and the dots they have still failed to connect.

In this light, let us revisit here some of the brass tacks of awareness creation, recognizing that we are bounded within the present system.

1. The WHAT: In Section VII.1, we saw how people do not really comprehend the individual power that has been put in the hands of each and every person through the RTI Act. And why would they? This needs a systematic breaking down – and reversing – of a deeply-rooted and nurtured psychology over many decades ***combined with proof that this power is not an illusion or on paper, but in reality.***

For the first part, **an awakening in the minds of people will happen only when they are able to recognize that the RTI Act puts *direct* power in their hands, and that this power is different from the power to vote; or the power that is given to and misused by their elected representatives; or the power that vests in and misused by officers who are meant to serve the people.**

It is this message that any awareness campaign designed by the government or non-government should aim at firmly planting in people's minds in the future.

2. The HOW: There are two broad ways of creating awareness on the RTI Act – extensive mass media campaigns, and intensive “going to the people” A third way, through suo-moto disclosure has been dealt with at length in preceding sections, so it is summed up briefly here.

Media campaigns should particularly focus on highlighting real examples of how the RTI has been practically used and proved successful in solving common people's problems. Secondly, RTI campaigns should be linked to development schemes and programmes and vice-versa. Making RTI an integral part of each scheme in media campaigns would be able to establish the concrete use of RTI in tangible terms. Local examples should be used in the campaigns so that they are sure to resonate with the people of that particular region or state. A series of such ad campaigns that show villagers applying for information, obtaining them and tackling corruption or dereliction of duty or unaccountability – based on absolutely true stories – is much more likely to drive home the point than abstract or say-nothing ads. A number of such stories are now easily available in the public domain and barefoot videos shot by ordinary people are a rich visual source.

Conversations with officials in the administrative reforms department and the state Information Commission revealed that there is no separate advertising or media budget for spreading awareness

about the RTI Act. This is a serious financial constraint that has to be immediately rectified. Allocation of even a small amount, if well planned-out, can have a widespread impact on awareness and in turn change the level of use of the RTI Act.

One cannot escape or avoid the fact that awareness creation about the RTI will not come about by one-way media campaigns alone. Many of the successful campaigns by the government were so because they combined an intervention at the ground level. Media campaigns on the importance of breastfeeding for instance, go hand in hand with an emphasis on educating women at all *anganwadi kendras*, through A.N.Ms and field workers. But herein comes a unique dichotomy in the case of the RTI Act.

Even if media campaigns are carried out by the government, one cannot leave the onus of awareness creation at the field level to government representatives alone in the case of RTI, as it is still largely perceived as a threat to themselves. The instruments of change have to be sought beyond the government and in fact, beyond any of the conventional bodies which have any sort of political interest.

The MKSS padyatra praxis has shown how artistic modes of communication that strike a chord with the people can prove effective in invoking awareness in them. Elsewhere, organizations/NGOs run “RTI on Wheels”, a vehicle which goes into hinterlands and creates awareness. All of these could be combined and made a regular feature in backward areas.

3. The WHO: However, it is not possible for a small group of people to cover the length and breadth of a state leave alone the country. Involving the NGO fraternity is not a serious option as often NGOs turn out to be dishonest or insincere themselves. Secondly, they have a limited reach. Thirdly, at the local level, NGO workers are a part of the village politics and hence can end up being biased.

If both government and non-government are not suitable candidates, then who will bell the cat? The answer may lie in a completely neutral, local set of people. This is where the potential of the youth, specifically, students may be explored. High school or early college students in rural parts and small towns come with relatively open minds characteristic of youth, have a passion for change, command enough knowledge of the local context and in most cases, are not yet a part of the village level politics. With a little bit of training on the

right to information legislation, they can be used to create awareness about RTI in a truly decentralized way. They can even educate their own parents, to start with.

A number of city-based students from top Indian colleges spend a few months with the MKSS every year, showing a keen interest and contributing valuably to the campaign. Rural students, however, have another advantage of “being there” and understanding the milieu in an intrinsic way as they have grown up with it. Importantly, their constant presence would help greatly in following-up on RTI-related issues over a much longer span of time. To maintain complete neutrality, student groups could be trained in the basics of the Act and lively communication modes and sent into neighbouring areas that they are not strictly from.

In fact, for the future, the planning could start far ahead. Right from school, right to information needs to be not just included in the syllabus but practically taught, just as chemistry is. Students should not only be taught RTI in theory, but encouraged to apply under the Act and use it to demand accountability in problems they see around them. And why not? If we are talking of “a culture of transparency”, we need to inculcate this culture from a young age. If education is made compulsory for all children and RTI made compulsory in all education, then widespread awareness among the student-parent population in all rural areas can be achieved. This is very much in the hands – and the will - of the government

Another category of people who can be specifically targeted and also involved in creating awareness are rural women. Even if illiterate, women who have understood the connect between the RTI and their livelihood issues are far likely to take this forward than men, given the chance. This is evident from conversations with women in the course of the field work. Beyond the awareness creation and possible use, it could actually pave the way for empowering them. Women, especially those working on NREGA worksites, could first be made aware of the RTI Act using batches of trained students who could visit these worksites periodically. Once that awareness has set in, the women in the NREGA unions can also be encouraged to raise many of the issues affecting them through the RTI Act.

4. The WHAT AFTER: It is important in the initial stages to provide a support structure that gives people the confidence that they are not alone; as this is the fear that often blocks the mind from even knowing further. Active women within NREGA unions can spread

awareness within the village. As they mature, the NREGA Unions can slowly take on the dual role of local Suchna Kendras. Thus, Suchna Kendras can evolve into an entirely village-owned affair, without any dependency on any outsider or single organization. A space can be provided within the Rajiv Gandhi Seva Kendra in each panchayat within which the Suchna Kendra can perform. Women can be trained in using computers and systematic maintenance of RTI-related queries, applications and so on. Initially, these ground level Suchna Kendras can be linked to the more experienced ones such as in Bhim, through a system of referral. Such supporting Suchna Kendras or special RTI Cells would be required to have some basics in place to work efficiently – most important of them being dedicated people to run them. RTI helplines can also become a part of these kendras, but these should be manned by people who have a sound knowledge of both the law and its practical working. A directory of PIOs and appeal officers could also be compiled at each of these centres, which could be made available to the locally organized Suchna Kendras.

5. And finally, a NOTE ON SUO-MOTO DISCLOSURES AND MONITORING: As we have discussed in section VII.2, display boards and wall paintings as done for NREGA works in the state are important but should not be the only mode of information dissemination to be relied upon for RTI. There is scope for more reader-friendly boards, which contain compiled information of all PIOs and Appellate Authorities of important offices, say in that district, at a glance. The use of RTI should be mentioned in wide publicity every time a new scheme is launched as well as combined with information provided about each and every existing scheme in any dissemination material or display boards prepared by the government or NGOs. The underlying philosophy – that the birth of a scheme begets the birth of accountability in that scheme – needs to be acknowledged by the government.

Websites, if maintained and updated diligently can provide a wealth of information to the literate class. However, they cannot and should not be the only way of information dissemination in rural areas, at least for some years to come. Information technology can be used to a higher degree at the point where awareness has already been reached, and where people are sufficiently literate.

Finally, translating the awareness into use will also depend on how credible people perceive this new-found power to be. This is extremely important, as other than activists and a few rare birds

who never give up, not many people especially those at the bottom will be able to persist despite coming up against a hostile power structure. If after a few attempts, a common man is not able to file an application, or does not get satisfactory answers or is unable to solve his problem through the RTI, he will simply give up – and call it a useless tool. Everyone, including the officers at the other end, knows this. The ‘turnaround time’ for providing information and the appeal procedure gives officers a long rope to chew on. Hence tightening of accountability of erring officials and amending the Act to reduce the period for providing information will be extremely crucial. In a larger context, serious administrative reforms are in order to tighten the noose around irresponsible functionaries and encourage elected representatives who are trying to bring about better transparency in their domains. But this again goes back to the ubiquitous question of higher political will. The use of CCTVs to monitor officials as done in Budania panchayat is an interesting experiment that could also be imbibed in contributing to higher accountability within every public office.

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4

**A Study of the Information
Commission in Orissa:
Functions, Effectiveness and
Detriments**

Nishikanta Mohapatra

PREFACE

“A study of the Information Commission in Orissa: Functions, effectiveness and detriments” has been conceptualized in the backdrop of the concern related to increasing cases of delayed or incomplete information as well as no information and harassment of the applicants. The Information commission has a vital role to arrest the slide in the RTI regime by speedy supply of information and making accountable the responsible officials for the delay or denial of information.

Broadly speaking, the detail study on State Information Commission, Orissa has been undertaken to identify the general patterns and remedial measures useful for all the information commissions and the information regime in general. It has the specific objectives to study the administrative structure of the commission, to find out the causes of delay in adjudication of penalty and appeal cases, to assess the level of satisfaction of the appellants/complainants and to study the level of compliance of the commission's order by the public authority.

The contents of the study (analysis, findings and recommendations) have been built on the information and data collected through consultation of secondary data and literature available with the commission on operational procedure, discussion with the Information Commissioners, perusal of Case records, exit interview with the complaints & defendants, questionnaire based interaction with the Public Authorities across types of PAs and located in different parts of the states, RTI users of different regions (Khurdha, Kandhamal, Bhubaneswar, Sundargarh, Dhenkanal, Kendrapara, Rayagada & Kalahandi).

I place on record my sincere thanks to State Information Commissioners, responsibility holders of the Orissa Information Commission for their support and valuable inputs. I appreciate the co-operation extended to me by the officials of public authorities, RTI Users and the volunteers of Orissa Soochana Adhikar Manch (OSAM). Last but not the least, I thank Department of Personnel & Training, Government of India for the fellowship which helped me undertake the study.

Looking forward to suggestions, inputs & Feedback

INTRODUCTION

There is no denying the fact that information catalyzes a human being's active participation in the life of the community/society. Dissemination of information facilitates development of agency, assertiveness and contributes to democratic dialogue. Information has been a key determinant of development & empowerment. Centrality of information in empowerment and development has been well-entrenched even before the current age of information affluence, when technology with its capacity for storage, compilation, retrieval and dissemination has strengthened the axiom that "Information is Power"¹. Information is a global resource of unlimited potential for all.

With citizens' demand for making access to information a right; a paradigm shift has come about in the discourse of ownership & control over information. The demand for right to information has been impinged on the fact that information is generated with public money by public servants paid out of public funds. Therefore, it cannot be unreasonably kept from citizens.

Right to Information as a Fundamental Right

The centrality of information in shaping individual personality, political and social identity and economic capability was recognized by the United Nations at its very inception in 1946, when the General Assembly resolved: "Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated"². Enshrined in the Universal Declaration of Human Rights, the right's status as a legally binding treaty obligation was affirmed in Article 19 of the International Covenant on Civil and Political Rights which states: "Everyone has the right to freedom of

¹ Impact of Technology: Meanwhile, several governance-related changes had an inadvertent but beneficial impact on the right to information. The computerization of information allowed easy access to it, faster and more transparent movement of files and led to a growing awareness that technological progress in offices is a force for transparency. Transparency is a by-product of the increased use of information technology in offices. The individual has the wherewithal to actualise this right in environments where the government has been typically reluctant to part with information. <http://www.cic.gov.in/AnnualReports/AR-200506/MainReport.pdf>

²UN General Assembly, (1946) Resolution 59 (1), 65th Plenary Meeting, December 14

opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

Before coming into being of Right To Information Act, 2005, the judiciary³ has underlined the importance of right to information as the cornerstone of citizenship and has pointed out right to information as a logical corollary of Right to freedom of speech & expression as enshrined in Article 19 of Indian constitution.

It needs to be reiterated that information is generated with public money by public servants paid out of public funds. The public fund is generated out of the tax payers' money and citizen as a tax payer has the right to information on the way and the purpose for which the public money is spent.

It is a contention beyond contest that freedom of expression & thought rings hollow in the absence of the availability of adequate information. Building informed opinion and contribution to democratic dialogue is possible only when citizen have access to unfettered information.

The right to access information underpins all other human rights. It is a critical component in assertion as well as realization of rights, since the citizen is a “rights holder” rather than a “subject” in a democratic polity. Right To Information as the fulcrum of human rights has come into sharp focus with instances of people using it to find out about their ration entitlements and to expose the fraudulent distribution of food grains⁴. More importantly, right to information positions itself at the core of human rights system as assertion & realization of third generation of human rights involves protracted struggle against the state and the vested interests through grounded lobby & advocacy based citizen activism where information is the

³*“In a government of responsibility like ours, where all agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries----to cover with veil of secrecy the common routine business, is not in the interest of public”-Mathew J. on behalf of the bench in State of UP vs. Raj Narain (1975) 4 SCC 428*

“The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19 (1) (a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy an exception”-Justice P.N. Bhagwati in S.P. Gupta vs. Union of India, 1982 SC (149)

⁴Kejriwal, A. (2003) “More Stories of Parivartan”, *India Together*, April 2003: <http://indiaatgether.org/2003/apr/gov-rtidelhi.htm>

most critical component. Information enables citizens to more meaningfully exercise their rights, assess when the rights are at risk and determine who is responsible for violations.

With the centrality of access to information in human rights; its recognition as a right accords it sufficient importance as inherent to democratic functioning and a pre-condition to good governance. The access of citizens to information remains no longer susceptible to whims & caprices of the government as it becomes a legally enforceable right. As a logical corollary, the citizen becomes a rights-holder and the bureaucracy has to play willy-nilly the role of a duty bearer with the responsibility to facilitate citizens' assertion and realization of rights to access information. It reinforces supremacy and sovereignty of the citizen underlining the fact that information belongs to the public and not government. The idea that everything is secret (as in Official Secrecy Act, 1923) unless there is a strong reason for disclosing it is replaced by the idea that all information is available unless there are strong reasons for denying it (Right To Information Act, 2005). The onus is on the duty-bearer to prove its case for refusing to disclose the information. With red-tapism becoming anachronistic and the so-called "enigma shrouded in mystery" no longer being the order of the day, the institutions and instrumentalities of governance has perforce to become responsive to demand based transparency & accountability. Last but not the least; it moves the locus of control from the state to the citizen, reinstating the citizen as sovereign.

Right To Information & Good Governance

The right to information holds within it the right to seek information, as well as the duty to provide information. The duty to enable access to information rests with government and encompasses two key aspects: enabling citizens to access information upon request; and proactively disseminate important information.

Transparency, accountability, participation, responsiveness, predictability & efficiency are the pre-requisites of good governance. Assertion of right to information makes the public officials answerable for the actions of the public entity (accountability), places the rules, regulations and decisions in the public domain (transparency), compels the public authorities to act with sensitivity to public demands & expectations (responsiveness), bridges the gulf between the public authority and the citizenry (participation), leaves the public officials with no option but to adhere to the normative uniform

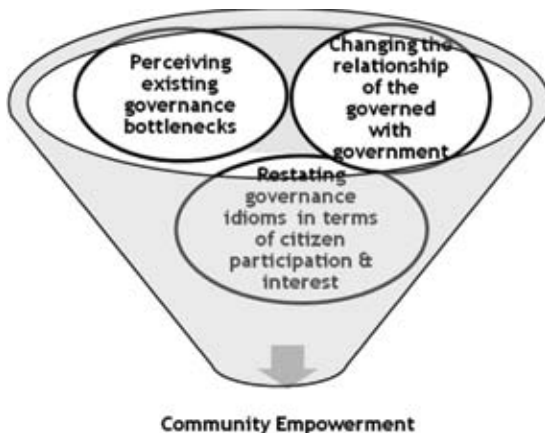


behavior in a given set of circumstances (predictability) and ensures service delivery consistent with the avowed purpose and objectives by the public authority (efficiency & effectiveness).

I believe that the passage of this Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which ensure that benefits of growth flow to all sections of our people, an era which eliminate the scourge of corruption, an era which will bring the common man's concern to the heart of all processes of governance, an era which will truly fulfill the hopes of the founding fathers of our republic⁵

Right to Information and Empowerment

RTI acts in two ways. First, through individual citizen's action under the Act, pressure is built on public authorities to disclose



⁵Dr. Manmohan Singh, Prime Minister of India, Speech in Parliament on May 11, 2005

information which otherwise would have been left confidential. Second, it forces the public authorities to revisit their long-held dogmas about what to reveal and what not to reveal. It is the only legislation which allows people to question the authority directly without the intervention of their elected representative, the court or the media. Being the powerful assault ever known on the monolith of official corruption it deals effectively with official discretion which is the most endemic source of corruption. Development of informed citizenry, encouragement of citizen action and participation and citizen's effort to demolish entrenched corrupt regime act upon each other in bringing about empowered citizen that are active in the democratic polity.

Experience suggests that periodic elections and a functioning bureaucracy do not in themselves ensure that governments are responsive and inclusive. Access to information has the potential to transform the polity from formal to consultative and responsive democracy.

In the absence of information on how political representatives function, electoral politics have thrown up narrow interests as the voters fall back on primordial considerations in electing their representatives. Better informed voters mean better-informed choices, more responsive legislators and better governance.

Democracy and national stability are enhanced by policies of openness which engender greater public trust in their representatives. This is a crucial aspect of effective governance-without the support and trust of people, governments are more likely to face resistance to their policies and programmes and implementation more difficult.

It is no wonder that regimes with veil of secrecy and opaqueness are unstable and become arenas of conflict. Access to information enhances people's trust in their government and contributes to national stability by establishing a two-way dialogue between citizens and the state, reducing distance between government and people and thereby combating feelings of alienation. Systems that enable people to be part of, and personally scrutinize, decision-making processes reduce citizens' feelings of powerlessness and weaken perceptions of exclusion from opportunity or unfair advantage of one group over another.

Right to Information & Development

Development discourse, of late has been built on the concept of



“entitlement” where the citizen is a rights-holder rather than the beneficiary. Citizen’s entitlement to information is the corner stone of all entitlements as securing access to information leads to securing other entitlements. Much of the failure of poverty reduction and development strategies to date can be attributed to the fact that, for years, they have been designed excluding the very people who were supposed to benefit. There is a growing disillusionment of the citizens with their governments that don’t have access to information: “Citizens are suspicious of the motives and intentions of their governments. They feel ignored or even betrayed by their elected representatives. Indeed, they feel suspicious of the very programmes and agencies created to meet the needs they have. They feel neglected, ignored and uncared for”⁶. The poor, the marginalized and the underprivileged are those who are deprived from information. Asserting rights under RTI; the poor and the marginalized holds the highest bureaucracy accountable and demand transparency leading to inclusive growth & development.

The demand for Right To Information & People’s Movement

The Indian legislation on right to information has taken its birth from the womb of people’s movement. Misappropriation of public money came to light with the movement by the people aimed at effective implementation of wage labour programme. The demand by the

⁶Commonwealth Foundation, “Citizens and Governance: Civil Society in the New Millennium, pp.38-39

people for inspection of record was initially denied. However, after a protracted struggle people got access to the records.

With the access gained to the records; people got to know that public money has been looted by the officials showing false payment of wages in their name. once government information was verified against work carried out on the ground for evidence of malpractices, a social audit of the expenditure incurred by the village government was conducted.

Increased awareness amongst the local villagers on their right to know about government functioning forced local government officials to open themselves up for public scrutiny. The demand for inspection of local government documents resulted ultimately in the demand for access to information held by the government. In 1996, a nation-wide network of senior journalists, lawyers, distinguished bureaucrats, academics and non government organization activists was formed that vigorously advocated the removal of the Official Secrets Act, 1923 and the legislation of a strong Right to Information Act at the Centre⁷. Building up of a large public upsurge demanding legally enforceable right to information led to enactment of Right To Information Act, 2005.

Right To Information Act & the Global Scenario

It has been established beyond doubt that countries perceived to have the most corrupt governments also have the lowest levels of development. Furthermore, countries with lowest levels of development are the countries that don't have effective legislation enabling the public to access information.

Multilateral agencies have time and again recognized "the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives"⁸. Participation of the citizens in free and democratic processes has explicit recognition of the right to access information: "the right to access information is an important aspect of democratic accountability and promotes transparency and encourages full

⁷Mander, Harsh and Joshi, Abha, "The Movement for Right to Information in India: People's Power for the Control of Corruption", Commonwealth Human Rights Initiative, New Delhi, 1999

⁸Declaration, Commonwealth Harare Declaration, Issued by Commonwealth Heads of Government, Zimbabwe

participation of citizens in the democratic process”⁹.

There is a broad consensus among the global community on the importance of making disclosure of information a norm fortified by legal guarantee by the state to its citizens. It is evident in states after states enacting legally enforceable access rights although a decade ago only a few Nordic, West European and American States had such legal entitlements for their citizens¹⁰.

⁹*Communique 02/88, Meeting of Commonwealth Law Ministers in Kingstown, St. Vincent and the Grenadines* www.thecommonwealth.org/docs/comminiques/News88.doc

¹⁰Sweden 1766-Included in Sweden's Constitution-Finland then part of Sweden

Finland 1951-Law on the Public Character of Official Documents

USA 1966-By an amendment of 1974 the onus of justifying restriction of access lies with government-Law places time limit for responding to requests; all non-secret information disclosable through “severability”; disciplinary action mandated against officials for wrongful non-disclosure

Denmark, Norway 1970s

UK 2000; Mexico 2002; Pakistan Fol Ordinance 2002; Nepal RTI 2002; Indonesia Fol Act 2008; Bangladesh RTI Ordinance 2008.

REVIEW OF LITERATURE

This section on “Review of Literature” navigates through the studies undertaken with the objectives of assessing implementation of the Right To Information Act. Selection of literature has been done on a wide kaleidoscope so that different nuances of issues & concerns related to the information seekers, information providers, operationalization of the provisions of the Act, institutional structures and mechanisms are taken into account for an in-depth study. It is worth the note that the present study seeks to examine and assess the factors behind the facts & phenomenon that have come out in the studies under review.

Study	Objective	Methodology	Scope
“State of Information Commissions In India: A Performance Evaluation” by Public Cause Research Foundation	Comparatively assess the performance of all Information Commissions	<ul style="list-style-type: none">• Analysis of orders on the parameters of Pro-disclosure factor, Deterrent Impact & Disposals• Appellant Interview grounded on two parameters of Overall Public Satisfaction & Effectiveness	<ul style="list-style-type: none">• Orders of 72 Information Commissioners of 25 Information Commissions• Interview of 8400 appellants
Accessing Information under RTI: Citizens’ Experience in Ten States	Assessing implementation of the Right To Information Act in Selected districts of ten states	<ul style="list-style-type: none">• Analysis of RTI Rules• Interview of applicants• Evaluation of the Performance of the Information Commissions through analysis of case records	<ul style="list-style-type: none">• Ten selected districts of 10 ten states• 420 RTI Users
Safeguarding the Right To Information: People’s RTI Assessment, RaaG & NCPRI	To ascertain how India’s nascent right to information regime might be further strengthened	<ul style="list-style-type: none">• Applicants’ Interview, Checking RTI Filing process, Second Applicants’ Interview, PIO Interview, Record Inspection, PA Premise Inspection• Focus Group Discussion	<ul style="list-style-type: none">• 630 FGDs organized in 30 districts of 10 states• 35000 persons interviewed• 1027 PAs inspected, 800 applications filed• 25,000 RTI applications analysed

Understanding the Key Issues and Constraints in Implementing the RTI Act, Price waterhouse Coopers	Assessing & evaluating the level of implementation of the Act with specific reference to the key issues and constraints faced by the “Information Providers” and “Information Seekers”	<ul style="list-style-type: none"> • Questionnaire based survey of Information Seekers & Providers • FGDs & one to one meetings with stakeholders; including PIOs & FAAs • Organization of National Workshops with participation of Central & State Information Commissioners, civil society organizations & media • Participation in seminars conducted by Civil Society Organizations 	Interview of 2000 information seekers and over 200 information providers across PAs at Centre, State and local levels in 5 states. Feedback of 5000 citizens on RTI Awareness
Functioning of Right To Information Act, 2005 in the State of Orissa: A Retrospective & Prospective Look”, OIC, Bhubaneswar, 2009	Assess the status of compliance with provisions of RTI and the role of SIC, Status of Suo Motto disclosure, capacity building initiatives of different training institutes, effects of IEC initiatives, initiatives undertaken by SIC, Orissa and Nodal departments in strengthening the information and transparency regime in the state	<ul style="list-style-type: none"> • Interviews of duty bearers • Structural-functional analysis of SIC, Orissa • Collection & analysis of secondary data 	<ul style="list-style-type: none"> • 27 Secretariat Departments and 116 Public Authorities

Functioning of Right To Information Act, 2005 in the State of Orissa: A Retrospective & Prospective Look”, OIC, Bhubaneswar, 2010	Identify the operational constraint and critical gaps faced by the PAs, PRIs and the members of civil society in accessing benefits of RTI, review the records and the registers maintained by PAs, status of suo motto disclosure, status of penalty by the Commission, assess the impact of training programs and recommend for improvements and/or modernization	<ul style="list-style-type: none">• Five different sets of interview schedules to collect data from PIOs, FAAs, HODs, Premises, RTI Users, Non-users• Structural-functional analysis of SIC, Orissa• Collection & analysis of secondary data	<ul style="list-style-type: none">• Covers RTI designated duty bearers such as; 144 PIOs, 66 FAAs, 31 HODs across Ganjam, Puri, Balangir, Sundargarh, Boudh & Mayurbhanj districts
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“State of Information Commissions In India: A Performance Evaluation” by Public Cause Research Foundation

The objective of the study is to comparatively assess the performance of all information commissions. It states “Whereas information commissions perform many functions, we feel the following three roles are most crucial and central” and explains those roles as follows;

Quasi-Judicial Function: Wherever there is a dispute whether information should be provided or not, the commission acts as a quasi-judicial body and is required to adjudicate whether information should be provided or not through a speaking order.

Ensure that an Appellant Receives Information: In rest of the cases, where it is clear that information has to be provided, the commission has a duty to ensure that the appellant gets full and correct information.

Strong Deterrent Impact: RTI Act empowers Information Commissions to penalize officials for violations of RTI Act. Therefore, the commission needs to create a strong deterrent impact so that officials attend to every RTI request, within prescribed time, so that appeals are filed in rarest of cases.

Methodology: For the purpose of the study, orders passed in 51, 128 cases during 2008 by 72 Information Commissioners and 14 combined benches from 25 Information Commissions (barring Uttar Pradesh, Tamil Nadu and Sikkim) were collected and analysed. While some orders were sourced from websites, in some cases RTI applications were filed and trips were made to the concerned Commissions to collect the orders. RTI applications were filed in all Information Commissions to obtain data on their brought forward and carried forward pendencies, budget details etc.

All the 34,980 appellants those who had received orders in favour of full disclosure were contacted through surface mail, over telephone and invited to give feedback on the website. In total, 8400 appellants (6000 through surface mail & 2400 through telephone and website) provided their feedback.

Three of the parameters i.e; Pro-disclosure factor, Deterrent Impact and Disposals were based on the analysis of the orders and the two other parameters i.e; Overall Public Satisfaction and Effectiveness were based upon public feedback.

Findings of the Study

Orders in favour of Disclosures: Nationally, for every 100 appeals and complaints filed in Information Commissions, orders in favour of disclosure were passed in 68 cases. Information was denied in 22% cases and 10% cases were remanded back.

Compliance of Orders: Nationally, just 38% of the pro-disclosure orders could actually be implemented. In the balance 62% cases, the people did not get information despite a favourable order. 44 commissioners could get less than 40% of their orders implemented.

Non-compliance: Many commissioners close a case after passing orders in favour of disclosure-without ensuring compliance thereof. The appellant has to struggle with the public authority for a few months to get their order implemented.

Continuing Mandamus: Some states follow the practice of “continuing mandamus”. They do not close a case after passing orders but post hearings subsequently for compliance thereof. The case is not closed till the appellant reports satisfaction. Their compliance rates are better than other commissioners and commissions. However, the problem with most of them is that barring a few, they have been quite soft with officers. Repeated non-compliance is ignored. Therefore, continuing mandamus needs to be coupled with strict enforcement.

Arrest Warrants: Section 18 (3) of RTI Act empowers commission to issue bailable arrest warrants and seek production of documents. Arunachal Pradesh is the first and the only information commission in the country to have issued bailable arrest warrants under section 18 (3) of RTI Act for non-compliance of commission’s orders.

Disposals: It was found there are commissions who achieve high rate of disposal by rejecting or remanding back almost 80% of their cases without hearings. There are also commissions who achieve high rate of disposal and bring down pendency. At the lower end are North Eastern states, who disposed very few cases because they get few appeals. However, there are some commissioners who disposed very few cases despite huge pendencies.

Imposition of Penalties: The RTI Act mandates that every violation of the Act “shall” be penalized unless there was a reasonable cause on the part of the PIO. Just 2.4% of recorded violations across the country were penalized. In 74% cases of recorded violations, Hon’ble Information Commissioners did not even question the PIO whether there was a “reasonable cause” or not. However, as many as 65% of these show cause notices remained pending at the end of the year. 23% notices were dropped because the commissioners found the explanations and excuses presented by the PIOs in these cases as “reasonable”. More alarmingly, there were 29 Commissioners and three Commissions who did not impose even a single penalty despite thousands of recorded violations.

Pendencies: Huge pendencies have become such a severe problem in some states that it takes more than a year for a case to come up for hearing if it were filed today. Some urgent steps need to be taken to address mounting pendencies. States with more than a year’s pendency are Orissa, Madhya Pradesh, Maharashtra, UP and some of the commissioners at CIC. Inflow of cases to the commission can be reduced with strict enforcement of penal provisions.

State of Records: In many commissions, the state of records is not very healthy. Many commissions do not even know for sure how many cases they disposed. Many commissions do not have copies of all orders. For example, the SIC, Uttar Pradesh claimed to have passed 22,658 orders during 2008. However, by their own admission they don't maintain copies of all orders.

Missing Records: The trend of PIOs reporting records to be missing or lost seems to be on the rise. However, in some parts of the country when the commissioners threatened police action, suddenly records came out, which means "missing records" was merely an excuse given by the PIOs to deny information.

Arbitrary Commissioner Strength: Commissioners seem to be appointed by state governments without reference to the pendency of that commission. It is important to formulate some guidelines stating on how much pendency a commissioner should be appointed.

"Accessing Information under RTI: Citizens' Experiences in Ten States-2008"-Society for Participatory Research in Asia, New Delhi

Society for Participatory Research in Asia, New Delhi has undertaken a study to assess the progress of RTI in ten selected districts of 10 states (Bihar-Madhubani, Gujarat-Ahmedabad, Haryana-Mahendragarh, Jharkhand-Jamtara, Kerala-Kollam, Madhya Pradesh-Sehore, Orissa-Puri, Rajasthan-Jhunjhunu, Uttar Pradesh-Sitapur and Uttarakhand-Chamoli).

Methodology

Objective: Assessing implementation of the Right to Information Act in selected districts of ten states

Research Questions: What are the difficulties faced by citizens in accessing information from the government departments?

Do State Information Commissions facilitate access to information to the citizens?

Selection of Sample: A questionnaire on the Right to Information was designed, which covered the experiences of citizens who have actually used RTI Act in accessing information from any public authority. The sample size of the respondents for the study was fixed as 420 of those citizens who had actually used RTI. The method of

sampling was random and effort was to collect the required data in the questionnaire from one district of each state. While collecting data for the questionnaire, diversity in terms of geographical regions (rural and urban contexts), gender, socio-economic profile and education of the respondent was given due importance. The data from the State Information Commissions was collected between January 2008 and July 2008.

The study has been divided into three sections: 1) Citizens Access to Information, 2) Response of the Appellate Authorities (First Appellate Authorities and State Information Commissions), and 3) Evaluation of performance of State Information Commissions

Findings

Citizens' Access to Information: It was found that a list of PIOs or a directory of PIOs at the district level was simply not available in the majority of the states, therefore; citizens have a difficult time in filing applications at the appropriate offices.

As far as the processes involved in filing an application are concerned, 78 percent of the respondents find the rate of application and additional fees reasonable, but the respondents found the mode of payment of fees restrictive. At the same time, some states like Karnataka, Punjab, Orissa, Madhya Pradesh and Himachal Pradesh have tried to make the application procedure complex by making identification proof mandatory, limiting the application to 150 words, requiring a separate application with respect to each subject and each year etc. Such complex procedures for filing RTI applications deter citizens from seeking information.

68 percent of the respondents said that they were able to get the information only after facing a number of difficulties in filing applications. The study shows that citizens mostly approach the gram panchayat, Block Development Office, Deputy Commissioner's Office and Zilla Parishad for assessing information.

Some important details about the Public Authorities, which should be in the Public Domain under Section 4 (1) (b) of the RTI Act, are not available in all the states. This shows that the various Public Authorities have not taken this provision seriously and even after two and half years of the RTI Act have not implemented the provision.

Response of the Appellate Authorities (First Appellate Authorities and State Information Commissions)

A significant percentage of RTI applicants do not go for First and Second Appeal as they feel it would not be of any help and they would be unnecessarily wasting their time and resources on the appeal process. Out of a small percentage of citizens who file a First Appeal, 70 percent of the respondents were still unable to get the information. A significant percentage of citizens going in for Second Appeal were still unable to get the information.

Evaluation of Performance of State Information Commissions

The disposal rate of Appeals of Haryana, Rajasthan, Uttar Pradesh and Uttarakhand SICs is between 77 to 93 percent, which can be considered good. The disposal rate of Complaints by the Haryana and Uttarakhand SICs is above 90 percent.

Non-action on the part of SICs in the face of large-scale denial of information in some states is a cause of concern. The casualness of the SICs, the apex body for ensuring compliance of RTI, about suo-motto disclosure raises questions about their functioning. Yet, the blame for the poor implementation of RTI in the states can't be entirely laid on the SICs, as they face tremendous budgetary and infrastructural constraints.

The Central and State governments have not provided the necessary resources and staff to the SICs; they have not appointed Information Commissioners (ICs) despite the fact that the Commissions have numerous pending appeals and complaints; the non-action of central and state government vis-à-vis non-compliance of the orders of the Commission by the Public Authorities-these incidences clearly show that the central and state governments have not made serious effort to make the SICs a strong institution and they pay lip service to transparency in governance.

“Safeguarding the Right To Information: People’s RTI Assessment 2008”- RTI Assessment & Analysis Group (RaaG) and National Campaign for People’s Right to Information (NCPRI), July 2009

The goal of the assessment was to ascertain how India’s nascent right to information regime might be further strengthened.

Scope & Methodology

The study was conducted in 10 states and Delhi, with 3 districts in

each state and 8 villages in each district selected randomly.

The study sourced data/information through use of instruments/questionnaires on;

Focus Group Discussion, Applicants' Interview, Checking the RTI Filing Process, Second Applicants' Interview, HOD Interview, PIO Interview, PA Record Inspection and PA Premise Inspection

Primary data collection: Over 17,000 persons were individually interviewed including over 1000 PIOs and heads of offices/departments.

630 Focus Group Discussions were organized. In course of the study, 1027 public authorities' offices were inspected both in the rural and urban areas, over 800 RTI applications were filed in various public authorities across the country, data regarding over 25,000 RTI applications was analysed, over 60 papers and magazines, in English, Hindi and six regional languages was analysed for content and coverage, over 5000 case studies extracted, depicting successes, failures and peculiarities of the RTI regime and 365 public authorities (PAs) were surveyed across the country.

Findings

Awareness

- Nearly 65% state that access to information, especially government information, significantly helps them solve many of their basic problems.
- Government is not a major force in raising public awareness about the RTI Act.

Constraints in Filing RTI Applications

- Over 40% of the rural respondents and 15% of the urban respondents stated that the most important constraint they faced in exercising their right to information was harassment and uncooperative officials. It is difficult to get addresses of PIOs, especially for district and sub-district levels.
- There are 88 different sets of RTI rules in India and differing rules mean differing amounts of fee to be paid, different modes of payment and even of filing applications.
- Some states insist on sending even letters in the state's

language, making it impossible for people from other states to access information (despite section 4(4) of the RTI Act).

Information Commissions

- Of the one central and 27 state Chief Information Commissioners initially appointed, 23 were retired IAS officers, 3 were retired judges (UP, Bihar and Jharkhand), one a retired IPS officer (Assam), and one a former Member of Parliament (Arunachal Pradesh).
- The most important issue regarding many Information Commissions is the delay in disposing of complaints and appeals.
- The study found that the number of cases where some penalty should have been imposed (just for delayed supply of information), by very conservative estimation, would be 22,500 in the 18 commissions for which the relevant data was available. The actual penalties imposed were 284, or about 1.4%.
- Almost all the information commissions responding complained about the inadequate financial and infrastructural support provided by the government. There were complaints about inadequate budgets, shortage of staff, poor infrastructure support, inadequate office space, and many other such. 75% of the ICs responded that they were not financially independent.
- Only four of the 13 responding ICs were satisfied with the manner in which state governments were following the orders of the state information commission.

Understanding the “Key Issues and Constraints” in implementing the RTI Act, PRICEWATERHOUSE COOPERS, June 2009

In the section, “Background” the study points out that RTI 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. It goes on to add that it is acknowledged by all stakeholders that substantial amount of work still needs to be done. Recognizing the fact that there are various issues and constraints involved in the

implementation of the Act, Department of Personnel and Training (DoPT), had engaged PricewaterhouseCoopers (PwC) for assessing and evaluating the level of implementation of the Act with specific reference to the key issues and constraints faced by the “Information Providers” and “Information Seekers”.

This study has taken into account the feedback of over 2000 information seekers and over 200 information providers across public authority (PA) at Centre, State, and local levels in 5 States. It also includes feedback of 5000 citizens with respect to their awareness of the RTI Act.

As part of the study, the team conducted four national workshops, in which Central Information Commissioners, State Information Commissioners, Civil Society Organisations, and the media participated. Apart from this, the team (i) participated in several seminars conducted by Civil Society Organisations, (ii) conducted various focused group discussions/one to one meetings with several stakeholders, including PIOs and first appellate authorities.

The survey design was a consultative process involving various stakeholders such as media, Civil Right Activists, PIOs, FAAs, Information Commissions, Citizens etc. The feedbacks solicited during consultation were incorporated before rolling out the fieldwork.

After the fieldwork was done by the team, the team was guided in the analysis by inputs received from select RTI Activists, Information Commissions from various States and the Consultative team formed for the purpose.

Key findings and recommendations of the study are with regards to the six broad areas of i) Enhanced Accountability and clarity in role, ii) Improving RTI Awareness, iii) Improving convenience in filing request, iv) Common infrastructure and capacity building, v) Improving efficiencies at Information Commission, vi) Institutionalisation of third party audit.

Enhanced Accountability and Clarity in role: The study finds that there is variance in role/ownership of State Information Commissioners (SIC) and State Nodal Department in implementation of the Act, inadequate planning at Public Authority level to proactively identify and address the constraints and ensure that citizens are provided the requested information and existence of inadequate processes, infrastructure or resources with the Information Commission to

measure the extent of implementation of the Act.

The study recommends for establishment of RTI Implementation Cell headed by a senior bureaucrat at the State/Central level to monitor the reports/status on various issues related to RTI based on inputs from SIC/CICs and the Public Authorities. The administrative head may constitute/appoint Public Authority's RTI Cell (PA RTI Cell), to proactively address the issues pertaining to RTI implementation and develop a roadmap for implementation. It also recommends 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.

Improving RTI Awareness: The study finds that the awareness level of the citizens regarding their rights as an appellant under RTI is minimal. There are instances when the principles of natural justice are not followed during the hearings.

It is recommended that the Government of India (GoI) should establish RTI as a "brand" through a mass awareness campaign with the objective to increase public knowledge and awareness, encourage citizen involvement and debate and increase transparency within the Government.

Improving Convenience in Filing Requests: The study finds wide gap in ensuring convenience to the citizens in filing requests for information and anecdotal instances where the citizen was discouraged to file for information requests.

It recommends for establishment of Common Service Centres (CSCs), RTI Call Centres, creation of RTI Portal and strengthening e-governance initiatives.

Common Infrastructure & Capacity Building: The study finds ineffective record management system, confinement of training to the provisions of RTI Act to the exclusion of public dealing, motivation, technology and service levels. It also records lack of software application to improve efficiency at the Information Commission and low motivations among the PIOs.

It recommends for re-organisation of record management system to promote information management, preparation of RTI ready plan (each Public Authority should do a self-evaluation and identify areas of improvements and budget requirements), development of RTI

compliant standard template for quick and rationale responses to the applicants by the Information Commission. It also recommends for earmarking of 1% of the funds of all Flagship Programmes for a period of five years for updating records, improving infrastructure, creating manuals etc.

Improving Efficiencies at Information Commission: The study finds large pendency of cases with a wait time of 4-12 months existed in most of the States which discourages people from filing appeals. Nearly half of the Information seekers did not receive replies to their RTI application and Appellants incur expenses to attend the hearing of second appeals at Information Commission. The projected numbers of the secondary appeals would grow to 2.5-3.0 lakhs by the year 2011.

It recommends hearings through video conferencing, passing order on merit of the case without hearing, usage of software application for managing the processes at the Information Commission for improving productivity/efficiency in disposal of cases, drafting of orders, day-to-day office administration etc.

Institutionalization of Third Party Audit: The study finds limited infrastructure/processes with SIC to carry out responsibilities under 19(8)(a), 25(1), 25(2), 25(3f) 25(3g) and 25(5), leading to non-compliance by PAs with regard to RTI provisions, no/inadequate mechanism for monitoring proactive disclosure, resulting in low compliance to Section 4(1b) of the RTI and non-adherence to service levels of 30 days causing delay in providing information to the RTI applicant.

“Functioning of Right To Information Act, 2005 in the State of Orissa: A Retrospective & Prospective Look”, Orissa Information Commission, Bhubaneswar, 2009

The study commissioned by State Information Commission, Orissa and conducted by Nabakrushna Choudhury Centre for Development Studies, Bhubaneswar assessed the status of compliance with provisions of RTI and the role of SIC, status of suo motto disclosure, capacity building initiatives of different training institutes, effects of IEC initiatives, initiatives undertaken by SIC, Orissa and Nodal departments in strengthening the information and transparency regimes in the state. The study aimed at documentation of good practices, preparation of parameters for building transparency index and recommend suggestions to SIC, Orissa for strengthening

implementation of RTI.

The study covers different target groups at various levels. It takes into account data from 27 Secretariat Departments and 116 other Public Authorities.

The study has relied both primary and secondary sources of data collection. Special case histories on successful cases have been documented on various issues so as to understand different processes adopted by different departments while implementing the RTI Act. In order to know the functioning of different aspects of the Act, in-depth interviews were conducted with the duty bearers of different departments. Both quantitative and qualitative data have been collected with the help of different scaling techniques and attitudinal assessments. The training programmes of different departments have been reviewed so as to find out status of training on various aspects of RTI.

The findings of the study is focused on the major issues of delivery of services, adequacy/ inadequacy of staff/ working hands in PAs, time management, record management, inter and intra departmental coordination, questioning pattern by the RTI applicants, response of the RTI applicants, support to PIO, role clarity of RTI Cell, review and monitoring of RTI activities, incentivization of designated RTI officers, staffing of SIC, Orissa, adequacy/ inadequacy of training, updation of pro-active disclosure, selection of PIO & FAA and the coverage of awareness programme.

The study recommends for charging the applicants the cost of compiling the information, assessment of the work load and filling up of vacant posts, adequate basic training on RTI Act for all the staffs, training on time, work and record management, modernization of infrastructure, record storage and presentation, provision of RTI Cell in each Secretariat Department and Heads of the Departments, RTI application receipt counter with e-documentation provision in the Secretariat and Heads of the Departments, improvisation of inter and intra departmental co-ordination, organization of awareness programme at block levels, translation of Act & Rules in tribal languages, exemplary punishment for authorities dissuading PIOs/ FAAs from compliance with the provisions of the Act, quarterly review of all Nodal Officers by I & PR Department, infrastructural and logistics support to the PIOs/FAAs, support from Law Department with regards to legal assistance and clarifications, compilation and publication of important decisions of SIC in manual form,

adequate funding support from the Government of India to the State government for software activities and administrative reforms to support the process of implementation.

The study recommends for amendment to RTI rules with regards to repeal of the provision for proof of identity by the applicant, simplification of Form A and expansion of the mode of payment of fee.

Pointing out that the SIC, Orissa with its present structure is unable to meet the timely needs of the complainants and appellants, it recommends for increase in the number of State Information Commissioners, appointment of regular trained staff, power of the commission to punish habitual offenders, pre-hearing processes at the level of the Registrar, time limit for SIC in disposal of cases.

Urging for budgetary support by the Government of India to the State Government, the study underlines the importance of suo motto disclosure, declaration of nodal officers to act as central coordinating officers in each Secretariat Departments and Heads of the Departments and administrative action in the case of duty bearers failing to comply with provisions of RTI. Furthermore, it recommends for development of a RTI Performance Index consisting of different indices for use in the assessment of each Public Authority with respect to the role performance while providing the information sought by the applicants.

Taking into account the practice of rejection by the Public Authorities, the study recommends opportunity to the applicant for rectification and revision of application, argues against rejection of RTI application on the ground of lack of identity proof and rejection of application on the ground of non-deposit of information fee within 15 days of intimation from the PA.

“Functioning of Right To Information Act, 2005 in the State of Orissa: A Retrospective & Prospective Look”, Orissa Information Commission, Bhubaneswar, 2010

The study initiated at the instances of the State Information Commission, Orissa has the objective to identify the operational constraints and critical gaps faced by the PAs, PRIs and the members of civil society at various levels to access the benefits of RTI rule in Orissa, to review the records and the registers maintained by the implementing agencies; to find out the status of suo-motto

disclosure by the PAs and the status of penalty imposed by the State Commission, to assess the impact of the training programs, and to recommend for the improvements and/or modernization reform of the implementation of the Act.

The study covered six districts equally representing three RDC zones (118 District Offices), 12 panchayat samities, 5 Gram Panchayats, 109 non-users from 6 villages and 30 RTI users. The study adopted five different sets of interview schedules separately to collect data from PIOs, FAAs, HODs, Premises, RTI Users, Non-users and one schedule to record the observations by the researchers. It covered RTI designated duty bearers such as; 144 PIOs, 66 FAAs, 31 HODs across 144 PAs of Ganjam, Puri, Balangir, sundargarh, Boudh and Mayurbhanj districts.

The study finds that there has been an increase to the tune of 46 percent in filing of RTI applications during the period 2005-06 and 2009-10. Disposal of RTI applications in 2009-10 was 95.15 percent of the total 39998 RTI applications received. Around 35862 (89.68%) RTI applications were supplied with information. Number of pending RTI applications over the years has substantially reduced from 14.54 percent in the year 2005-06 to 4.84 percent during the year 2009-10. Submission of First Appeal with FAA constitutes only 4.68 percent of all the disposed RTI applications during the year 2009-10. During the year 2009-10 the disposal of Complaint Cases and Second Appeal were 37.03 percent and 32.25 percent respectively. Out of 144 PAs, 56 (38.88 percent) had web and hard copy based disclosure of their information. Around 41 (28.47 percent) PAs had not made any declaration of information.

As regards the training of RTI designated persons, the study reports that out of 144 PIOs, 105 (72.91%) have been trained. SIC has provided financial support to 7 training institutions located at Bhubaneswar to organize training programs. SIC has placed a total amount of Rs. 17,55,230 during the year 2008-09 to different training institutes to organize various training programs on RTI Act. OIC has also placed funds to different district authorities to organize trainings/workshops at district level, urban local bodies, block level, GP level and to organize Soochana Sibirs.

Out of 144 PIOs, 36 (25%) agreed that penalty should be imposed in case RTI officials deviate from the Act. Only 18.05 percent PIOs view that there is an improvement in the service delivery processes after imposition of penalty on few PIOs; while 56 (38.88%) don't see

any change in the quality of service delivery.

Out of 30 RTI users in the study, 14 (46.67%) had applied to OIC as they were denied information at lower level PAs and of them 57.14 per cent felt that they have been got justice at OIC. Similarly, 64.28 percent expressed that OIC takes more than one year to dispose their RTI applications which negatively affects the interest of the RTI users. Around 80 percent of the RTI users believe that the Act can be used to get information from government on development activities and in benefiting individuals to solve their problems. More awareness programs are needed by the PAs to popularize the RTI Act among the people. The disposal of RTI cases should be made within a time limit at OIC.

ABOUT THE STUDY

The Information commission has a vital role to arrest the slide in the RTI regime by speedy supply of information and making accountable the responsible officials for the delay or denial of information. But, to our dismay we find the commissions overwhelmed with complaints and appeals fail to manage the cases to the satisfaction of all the stake holders. Orissa Information Commission saddled with a pendency of more than 8000 cases and disposal rate of 300 cases per commissioner per year with an average time span of two years for initiating hearing into a case in essence has betrayed the mandate for time bound information. Many aspects are attributed to the logjam. Starting from inadequate and inefficient staff to incompetence of the information commissioners are in news. Again in the absence of any reliable data or study, it is quite difficult to pin-point the exact nature of problems hampering the disposal of cases as well as satisfaction of the information seekers.

Hence, the felt-need to have a detailed study about the information commission as a key factor in information regime and also to take the feedback from the stakeholders to ascertain the loopholes in the system. The study of a single information commission although a small sample, could help in identification of some general patterns and remedial measures useful for the information commissions and the information regime in general.

Objectives of the study

To study the administrative structure of the information commission in Orissa

To find out the causes of delay in adjudication of penalty and appeal cases in the commission

To assess the level satisfaction of the appellants/complainants in the process of hearing

To study the level of compliance of the commission's order by the public authority

Methodology

Methodology adopted for the study has appropriate mix of formal

and informal process & methods of data collection.

Interview: Instruments such as; structured questionnaires for collection of data/ information and elicitation of views & opinions of the Information Commissioners, Duty Bearers of State Information Commission, Public Authorities and Complainant & Defendants was designed to be canvassed. Written response was solicited from the Information Commissioners and the Duty Bearers of the State Information Commission. Since written response did not come, the fellow interacted with the Commissioners, Secretary, Registrar, Court Master, Section Officer, Law Officer & Scrutinizer on the basis of the Structured Questionnaire designed for the purpose. Interaction rather than written response proved to be fruitful since the fellow could elicit views & opinions not only on the questions mentioned in the questionnaire but also on supplementary queries that the response gave rise to. The sum & substance of the interaction have been the contents of “Orissa Information Commission: Composition & Structure” and “The Functioning of SIC: Impediments & Opportunities”.

Questionnaire for Public Authorities was meant to be canvassed through personal interview. Apart from canvassing the questionnaire among nearly 10 Public Authorities, the fellow has canvassed the questionnaire through telephonic interaction with duty bearers of Public Authorities of his acquaintance such as; Deputy Collector, Kalahandi; Tehsildar, Rairangpur, Mayurbhanj; Tehsildar, Nabarangpur, Assistant Professor, Ravenshaw University, Cuttack & IIC, Police, Angul. Following interaction with the PAs it was found that the quantitative information sought with regards to number of applications filed, number of applications disposed within stipulated time, delay in serving the RTI application, complaints & appeals against the PA pending with & finalized by the Commission don't have much significance as far as numbers are concerned. However, the underlying factors that came out in course of the interaction have become the contents of “State Information Commission and the Public Authorities”.

Structured Interview Schedule was also designed for Exit Interview of the Complainants & Defendants. The questionnaire was canvassed for consecutive 7 working days of the Commission. Since not many complainants turn up on the day of hearings, the exercise could take the views & opinions of the defendants/duty bearers of the Public Authorities. Even though the defendants were mostly reluctant and diffident at best in their interactions, such interactions have been

captured in some of the observations made in “State Information Commission and the Public Authorities”.

Study of Case Records: Furthermore, getting hold of all the nuances of a complaint/ appeal in course of hearing was not helpful in getting an insight into the way a complaint/ appeal is adjudicated. Therefore, the study sought to peruse case records that not only provided insight into the way complaints/ appeals are adjudicated but also the functional aspects of the SIC in adjudication. Perusal of the case records has been the building blocks of the section on “The Functioning of SIC: Impediments and Opportunities”.

Interaction with RTI Users: As per the design of the study, it was proposed that the perception of the RTI users (Complainant & Appellant) would be elicited canvassing the Interview Schedule at the Commission on the days of hearings. However, a few complainants & appellants turned up and therefore, the process and method had to be changed. The fellow reached out to the RTI Users making field trips to RTI Clinics at Gediapalli, Khurda and Rairakhol, Sambalpur. That apart, RTI Users (Complainant & Appellant) of Kandhamal, Sundargarh, Kalahandi, Rayagada, Dhenkanal have been interacted with. In total, perception of nearly 50 RTI Users has been recorded in course of the study. The chapter on “State Information Commission and the RTI Applicants” records the perception of the Complainants & Appellants.

Desk Review: The fellow has consulted Annual Reports of the SIC, surfed Commission’s website for landmark judgments, Orders and perused other documents such as Job Chart available with the Commission. Desk Review has been helpful in understanding the Composition & Structure of the OIC.

Reference of Reports of Consultations, Seminars, Workshops & Action Research: Reports of the multi-stakeholder based Consultations, Seminars, Workshops organized by Orissa Soochana Adhikar Manch, PRIA, Orissa, RTI Coalition, Orissa & Citizens’ Apex Forum, Bhubaneswar have been referred. Reports of action research on RTI undertaken by civil society organizations have been studied. Web-based networking among RTI activists has also been accessed. The inferences & conclusions drawn with the help of above sources have been appropriately placed in different sections of the study such as; “The Functioning of SIC: Impediments and Opportunities”, “State Information Commission and the Public Authorities” and “State Information Commission and the RTI Applicants”

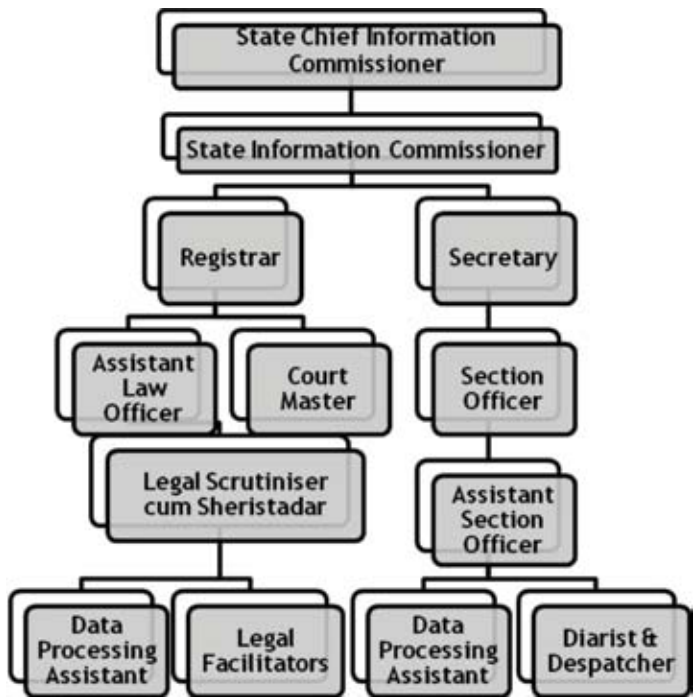
Orissa Information Commission: Composition and Structure

Orissa Information Commission was constituted on November 20, 2005 and operated temporarily from the premise of the state Guest House. The state government has allotted 16599.76 sq. ft. of floor area in B1 Block of Toshali Plaza Complex, Satyanagar, excluding corridor, Lift space and common areas for permanent accommodation of Orissa Information Commission vide G.A. Department Letter No. 14053, dt. 1.12.2006. Since 2007, the Commission is operating from its permanent accommodation in Tosali Bhawan and is quite spacious for the public as well as the staffs.

The then Chief Information Commissioner Mr. D. N. Padhi and the commissioner Prof. Radhamohan were administered oath of office in the Raj Bhawan on November 20, 2005 by the then Governor of Orissa Sri Rameswar Thakur. But, the functioning of the commission as per its mandate started after the creation of posts by the state government and joining of the Registrar on 3.4.2006 as envisaged in the Orissa Information Commission (Appeal Procedure) Rules, 2006. It is only after the joining of the registrar that the procedures laid down in the rules referred to above were implemented and complaint cases u/s 18 and second appeals u/s 19(3) of the Act were registered, processed for hearing and final disposal. Therefore, it is imperative to remember that for almost four months the Commission could not function as there were no staffs and Registrar.

Presently, Orissa Information Commission comprises of the State Chief Information Commissioner Mr. Tarun kanti Mishra, State Information Commissioner Mr. Jagadananda and State Information Commissioner Mr. Pramod kumar Mohanty. Out of the three Commissioners Mr. Tarun kanti Mishra is from Indian Administrative Services (IAS), Mr. Jagadananda is from NGO background and Mr. Pramod kumar Mohanty is from Orissa Administrative service. The commissioners apart, there are the posts of the Secretary, Registrar, Section officer, Senior assistants, Court master, Legal scrutiniser-cum-Sheristadar, Legal facilitator, Data processing assistants, Peons and Drivers.

Organogram



Job Description of Staffs

Designation	Powers & Duties
State Chief Information Commissioner (SCIC)	General Superintendence, direction and management of affairs of the State Information Commission. Hearing of Complaints/Appeals as per the provisions of the Act.
State Information Commissioner (SIC)	Each Commissioner including the SCIC has been allocated with Departments for the purpose of dealing with Complaints and Appeals, assisting the SCIC in matters of the General Management of the Commission.
Secretary	Overall supervision of all administrative work, Liaisoning with State Government and Govt. of India on behalf of the Commission. Any other work assigned by the SCIC.
Registrar	Management of the overall documentation, supervision, monitoring the work of the Registry in dealing with Complaints and Appeals including compliance of the decisions of the Commission.

AFA-cum-Under Secretary	Monitoring and maintenance of Accounts Records and Audit report. Monitoring and follow-up of the Minutes of the Commission Meeting, monitoring harassment and grievance matters related to RTI. All matter relating to professional & Income Tax. Monitoring/ updating website. Any other work assigned by the Commission.
Principal Private Secretary/PS/PA to SCIC	Secretarial Assistance, any other work assigned in routine course by Hon'ble SCIC.
PS/PA to SIC	Secretarial assistance to SIC and any other work assigned in routine course by SIC
Private Secretary to Secretary	Secretarial assistance to Secretary. Maintaining the U.O.I. Register, Minutes register of the Commission
Asst. Law Officer	Render assistance to the Orissa Information Commission in disposal of Complaint Cases and Second Appeals, monitoring of follow up action of the order of the Commission and other Court cases
Court Master	Court Management/ Case records, Cause list preparation and follow up compliance documentation
Scrutinizer-cum-Sheristadar	Scrutiny and Registration of Complaints/ Second Appeals and forward them to the staff of respective courts. Issue of the decisions/ orders of the Commission to the parties, Render help to the illiterate persons and guide them to exercise their rights under the Act. Any other work of the Legal wing specifically entrusted to him/ her by the Registrar.
Section Officer - I	Complying the orders of Secretary for general superintendence and management of affairs of the Commission
Section Officer - II	Security and housekeeping of the Commission, preparation of budget, upkeep and management of records. He will be accountable to the Secretary through AFA-cum-Under Secretary
Asst. Section Officer	As per distribution of work made by the Secretary

Budget Allocation and Expenditures

Very often the State Information Commission attributes its functional inadequacies to structural deficiencies and lack of proper staffing. For example, RTI Act provides for 10 numbers of Information Commissioners excluding the Chief Information Commissioner as per requirement u/s 15 (2), but the state Government has sanctioned only two posts of Information Commissioners against the mounting pendency of complaint and appeal cases. Again, there is a persistent complaint about under paid and overworked staffs. It seems the state government is quite reluctant to recognise the special need and expertise required from the staffs and the finance department has shown no urgency to approve the demand for higher salary for certain posts.

Therefore, it is very pertinent that the present study takes into consideration the comparative aspect of other Information Commissions in matters of finance, staffing and workload, so that the structural appraisal can be done in a better manner. Within the limited scope of this study we are making a comparison of the State Information commission of Orissa with that of the Central Information Commission. It will at least provide a scope to analyse the gap between the existing infrastructure and the expected arrangements.

A Comparative Study of Finances of the State and Central Information Commission

Expenditure of CIC in 2009-2010¹¹

(In Lakhs)

Salary	Wages	Overtime Allowance	Medical Treatment	Domestic Travel Expenses
442.75	114.89	1.57	2.45	9.85
Foreign Travel Expenses	Office Expenses	Rent, Rates & Taxes	Publication	Other Administration Expenses
2.06	150.22	159.68	6.70	11.34
Minor Woks	Professional Services	Information Technology	Total	
7.97	38.00	4.98	952.46	

¹¹ <http://www.cic.gov.in/AnnualReports/AR-2009-10/AR2009-10E.pdf>, p.35

Expenditure of SIC, Orissa in 2009-2010¹²*(In Lakhs)*

Salary	Travel Expenses	Leave Travel Concession	Office Expenses	Rent, Rates & Taxes
87.50	10.00	4.72	74.55	0.21
Training, Awareness & Campaign	Organization of Seminars & Workshops	IEC Activities	Lump Provision	Professional Services
5.00	20.00	10.00	0.01	13.00
Advertisement	SCP for SC, Organization of Seminars & Workshops & TSP	Organization of Seminars & Workshops	CSP	
Training, Awareness & Campaign deduct State Share charged to State Plan	Total			
0.01`	10.00	15.00	5.00	255.00

A Comparative Study of Case Disposal

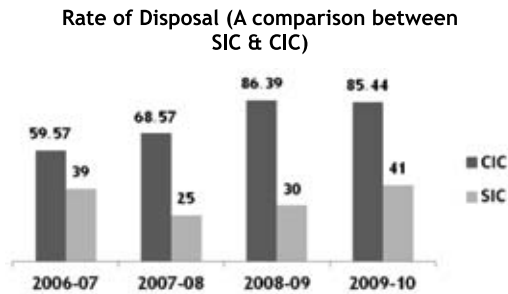
Sl. No	Years	CIC ¹³			SIC ¹⁴		
		Receipt	Disposal	Percentage	Receipt	Disposal	Percentage
1	2006-07	6839	4074	59.57	1320	515	39
2	2007-08	11261	7722	68.57	2500	629	25
3	2008-09	15426	13322	86.39	2365	717	30
4	2009-10	22800	19482	85.44	3124	1272	41

A comparison of rate of disposal between the SIC & CIC shows that the rate of disposal of SIC, Orissa is far less than that of the CIC. In this context, it is important to note that the rate of disposal

¹²Orissa Information Commission, Annual Report 2009-10,p.49

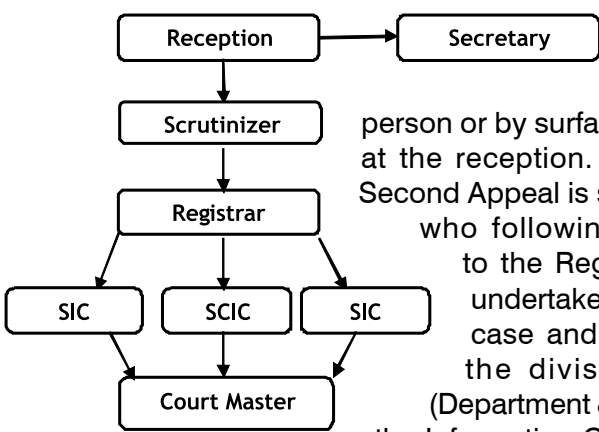
¹³<http://www.cic.gov.in/AnnualReports/AR-2009-10/AR2009-10E.pdf>,p.22

¹⁴Orissa Information Commission, Annual Report 2009-10,p.18



even doesn't justify the less number of Information Commissioners that SIC, Orissa has compared to that of the CIC. It provides strong inkling to the fact that processual factors are responsible for such rate of disposal.

Tracking a Complaint/Second Appeal Filed in SIC, Orissa



A Complaint or a Second Appeal either submitted in person or by surface mail is entertained at the reception. The complaint or a Second Appeal is sent to the scrutinizer who following scrutiny sends it to the Registrar. The Registrar undertakes a detail study of the case and taking into account the division of jurisdiction (Department & Geography) among the Information Commissioners sends the Complaint/Appeal to the respective

commissioners. After perusal of the case; the Commissioners decide the case to be remanded back, to be accepted as a Second Appeal or as a Complaint. Court Master sends Preliminary Notice to the Public Authorities, sends for Call for Notice and attendance in the Hearing. Assistant Law Officers aid & advice the Commission on different aspects of law.

Similarly, any communication received on administrative matters is sent to the Secretary by the Receptionist. Section Officer, Assistant Section Officers assist the Secretary in the day-to-day affairs of the Commission. Data Processing Assistants support both the Secretarial and MIS needs of both the Legal & Administrative wings.

THE FUNCTIONING OF SIC: IMPEDIMENTS AND OPPORTUNITIES

Orissa Information Commission in its existence of five years has received bouquets as well as brick bats. The Commission in its effort to strengthen the RTI regime in the state has taken a number of administrative decisions and has suggested a number of measures to the state government. It has taken up various programmes to spread awareness among the public on RTI and to educate the public as well as government officials about the provisions of the Act. It is essential to mention that the commission collaborated with civil society organisations as well as government training institutions to mount a massive coordinated campaign for RTI training and awareness generation among the public and the officials. Again the Commission has developed a number of IEC materials to help the common man appreciate this pro-people Act.

All kinds of actions of the State Information Commission towards strengthening the RTI regime can be summed up under the following heads:

Administrative decisions

1. Preferential hearing of public interest cases: During disposal of complaint cases and second appeals, the commission perceived two types of disputes; one involving public interest and the other involving individual interest of citizens. The commission took a decision that it will give priority to the disposal of public interest cases by putting an identifying mark on the case record as “PIC”¹⁵ so that the hearing of the case is done on a fast track basis.
1. Continuing Mandamus: State Information Commission follows the practice of “continuing mandamus”¹⁶. It does not close a

¹⁵The Orissa Information Commission has decided to give precedence to Public Interest Cases (PICs) over personal matters by way of out-of-turn priority consideration (10/01/2007);

Source: [orissasoochanacommission.nic.in/Important Administrative Decisions Taken by OIC](http://orissasoochanacommission.nic.in/Important%20Administrative%20Decisions%20Taken%20by%20OIC)

¹⁶Shri Nigamananda Panda vrs. PIO & FAA, Orissa Public Service Commission, Cuttack, Orissa, “The State Commission, therefore, while accepting the contentions of the Appellant in the context of the RTI Act, 2005 (Act 22 of 2005) direct the PIO,

case after passing orders but post hearings subsequently for compliance thereof. The case is not closed till the appellant reports satisfaction.

2. Single Bench: As the number of cases increased, the commission took a decision that it will hear the cases in single benches. Accordingly, the three commissioners are hearing the cases separately and it has resulted in better output.
3. Separation of adjudication area: For convenience, the three commissioners have divided the different Departments and Revenue Districts among themselves and thus areas are earmarked for each single bench.
4. Hearing on atrocity problems faced by the applicants: The Chief Information Commissioner of the state has marked First Monday of every month as the day on which he will be taking up cases relating to violence or atrocities on the activists or applicants directly, if put before him.

Awareness- cum –assistance camps

The State Information Commission organised Awareness cum Assistance programmes called “Soochana Shibirs” in all Revenue District head quarters and six important towns namely, Berhampur, Bhubaneswar, Jeypore, Paradeep, Rourkela and Talcher for ten days i.e. from November 10 to 19, 2006. The Soochana Shibirs in all the 36 places were hugely successful creating a great deal of enthusiasm as well as awareness among the general public regarding the provisions of RTI act 2005 and Rules thereof. About 61 thousand people visited the Shibirs held all over the state and 38800 RTI applications were facilitated to ensure accountability from public authorities in various welfare schemes. In effect, the RTI act found a good grounding in the state through this Awareness- cum- Assistance campaign.

Orissa Public Service Commission, Cuttack to provide photocopies of answer sheets of the OJS examination 2003-04, as requested by the Appellant, free of cost in view of the delay, within 15 days that is by 22/08/07 and report compliance to the State Commission through the Registrar. He is simultaneously directed not to disclose the names and addresses of the examiner(s), Chief Examiner(s) and Scrutinizer (s) etc. whose equation with the OPSC is/was of a fiduciary nature.

Put up on 24/08/07 for perusal of Compliance report. S.A. No. 70/2007; Source: <http://orissasoochanacommission.nic.in/Important Cases decided by OIC>

Training Programmes

1. In order to explain the provisions of the RTI Act, 2005 and the Orissa Rules framed thereunder in the workshops at different levels like districts, blocks and gram panchayats, the State Commission intended to create a large number of resource persons from all districts of the state. The Commission in collaboration with State Institute for Rural Development (SIRD), Bhubaneswar conducted the TOTs in their premise. Three resource persons from each district selected by the Collectors from various walks of life took training on RTI Act in three batches held from 7.9.2006 to 8.9.2006, from 15.9.2006 to 16.9.2006 and from 19.9.2006 to 20.9.2006.
2. Again the State Commission organised training programmes in collaboration with civil society organisations for volunteers of Nehru Yuvak Kendra (NYK), NSS, CSOs, Panchayatiraj representatives, senior citizens, women and government employees. It definitely brought in a good set of RTI trainers in the state.

IEC material production

The State Commission published a booklet on frequently asked questions on RTI Act and Rules in Odiya and eight other major tribal languages of the state for the general public of the state. One lakh copies of the same were printed for free distribution among the public towards better awareness application of RTI provisions.

It also printed one lakh copies each of the RTI Act, 2005 and Orissa Right to Information Rules, 2005 in Odiya and English for free distribution among the officials, PRI representatives, CSOs and general public.

The Commission also came out with four different multi-coloured posters in Odiya to guide the general public about the applicability of RTI Act in scheme tracking and ensuring accountability about dispensation of entitlements.

Circuit Courts

The Commission has started hearing the cases at places other than the Headquarter at Bhubaneswar. The intention is to help the complainants and the appellants in remote areas to get access to the commission at their door steps. But, this circuit hearing is yet to

be regularised and practised by all the three commissioners as the staffs are reluctant to move from the headquarter and also there is no adequate budget for this purpose.

Video Conferencing

Video conferencing facility has been installed in the commission to facilitate hearing of the cases in video mode. But, again it is yet to be functional at a regular basis and adequate logistic arrangements are yet to be done at the other ends.

Legal Internship

In order to spread the use of RTI Act among the lawyers and to make them sensitive about the people-friendly tool an internship programme is being run by the commission for the students of the LLM course. In the process not only they know the working of the commission and the RTI Act but also get a career fillip for the experience they have accrued during their internship.

Recommendations to the State government

1. For declassification of records/ documents marked secret/ confidential etc. and to make these accessible to the citizens under the RTI Act, 2005.
2. To include an item on RTI in the agenda in every collectors' conference and allot a prime time slot in order to have detailed discussion regarding the obligations under the RTI act.
3. To implement the guideline for inspection/review by the district collectors on RTI during their field visits and inspection of subordinate offices.
4. To take appropriate action to ensure that the NGOs which have been funded substantially by the State Government/ Central Govt. directly or indirectly designate Public Information Officers and First Appellate Authorities since such NGOs come under the definition of Public Authority as per Section-2 (h) of RTI Act, 2005.
5. To take up training for all officials designated under the RTI Act, 2005.
6. To ensure that pro-active disclosure as prescribed u/s 4(1)(b) are made by all public authorities and to initiate suitable disciplinary action against the heads of defaulting public authorities.

Recommendations to the Central government

1. The Central Government should provide full financial assistance to the state government to meet the cost of establishment and proper functioning of the state commission keeping in view its evolving needs and to strengthen the infrastructure for voluntary disclosure of information by public authorities as mandated u/s 4 of the Act.
2. There appears no penal provision in the Act to firmly enforce implementation of the provisions of sec 4 of the Act which needs to be incorporated in the Act.
3. To obviate non-compliance of the provisions of section 5 of the Act by the Public Authorities, the state commission is to be statutorily empowered by introducing appropriate penal provisions in the Act.
4. The phrase “right of appeal” appearing in Section 19(9) of the Act needs to be deleted since it is inconsistent with the provisions of section 19(7) and 23 of the Act. Alternatively, it should be properly clarified in terms of the intentions of the framers of the law.
5. The contempt of court power should be available to the state commission to ensure effective implementation of the provisions of the Act.
6. Orissa RTI rule 2(1)(c) should be suitably amended to help the BPL applicants to get information free of cost (to a maximum limit of Rs 150/-) as intended by the RTI Act, 2005.

Landmark Judgments

1. The State Information Commission allowed copies of answer scripts setting aside the rejection orders of the PIO and the First Appellate Authority with the observation that RTI Act, 2005 supersedes all earlier systems/legal provisions¹⁷.

¹⁷In the instant case, there was no mala fide or willful refusal to furnish the copies of the answer scripts to the complainant.-----Since similar doubts might be still persisting in the minds of many PIOs in different educational institutions, the Principal Secretary, Information & Public Relations Department being the head of the nodal Department is directed to issue appropriate clarification to all Departments of Government associated with educational activities and conduct of examinations to facilitate an examinee to have access to the photocopies of his/her own answer scripts under the provisions of the RTI Act, 2005. -Complaint Case No. 1413 of 2008; Source: <http://orissasoochanacommission.nic.in/Important Cases decided by OIC>

Also see: S.A. No. 70/2007; Shri Nigamananda Panda vrs. PIO & FAA, Orissa Public Service Commission, Cuttack, Orissa

2. The Orissa RTI Rules provided for payments of fees only through the Treasury Challan and Cash. The Information Commission widened the interpretation of cash to include Indian postal order and money order to help the applicants in easy deposition of the fees¹⁸.
3. The commission distinguished personal information from personal official information and allowed 'personal official' information under the purview of RTI Act in difference to 'personal personal' information.

However with all these noble intentions and actions, the state information commission in Orissa has been a failure from peoples' perspective as it has failed to ensure supply of information in time and also to create the necessary fear of deterrent punishment among the Public Information Officers (PIOs) and referred PIOs. Again, although it has made many recommendations to the government regarding suo motto disclosure and amendments to the RTI act and Rule, it has not been able to streamline the hearing of cases and manage the pendency at its end. The impediments that prevent the State Information Commission to achieve its high objectives and serve the people to their satisfaction can be summed up as follows:

Lack of motivated staffs

The State information commission has staff strength of forty including the information commissioners and the chief information commissioner. Out of these staffs only eight persons have a scale of pay as per the government rules and the others are temporary employees recruited through a placement agency on a paltry salary not at par with the post or the work assigned to the post. With the lower salary and uncertainty of job, the staffs are highly demotivated and are not able to meet the high expectations and efficiencies required from such a transparent and time bound organisation. It is a fact that delay in registration of complaints/appeals, no issuance of the order in time and response to public queries are at

¹⁸The State Commission in several pronouncements in the past has observed that the payment of requisite fees or cost can be made by money order, accounts payee Bank Draft, Banker's Cheque or Indian Postal Order. Such decisions of the State Commission were also conveyed to all concerned in the State by the information and Public Relations Department in their Office Order No. 6468, dated 18.02.2009 which was followed by Office Memorandum No. 18102, dated 14.07.2009-Complaint Case No. 1061 of 2009;

an abysmally low point in the scale of standard of the performance of the employees.

Case studies, competencies, willingness, attitude

At the commission itself the staffs are yet to be oriented towards Right to information regime. If any person goes with any queries to the office of the commission, then the general reply is that “please take the order of the higher authority”. I myself had tried hard on two occasions to cross this mental barrier of looking towards the higher authority for routine information but it was of no result.

On the first occasion I tried to know the pendency of the cases at the commission under suo motto disclosure as it is a pretty common information. But to my dismay, the data processing assistant guided me to the legal scrutiniser cum sheristadar, and then the seristadar asked me to take the permission of the section officer cum PIO who again asked me to take the permission of the Secretary of the commission. Again, the buck did not stop at the secretary himself as he asked me to come another day as he was feeling it necessary to take the permission of the chief information commission himself.

The second case relates to availing a hard copy of the annual report of the commission for the last three years. To my utter surprise, I had to go through the same experience again to get the copies after due diligence in four days. These two cases are a routine feature of the working of the commission secretariat and highlights the need for decentralisation of decision making power as well as orientation of staffs towards a new culture of openness and pro-people orientation.

Lack of orientation of the Commissioners

Orissa Information Commission constitutes of two information commissioners and one chief information commissioner. The learned information commissioners are highly respected and competent persons and have the necessary drive to see the proper functioning of the information regime in the state. I have had many rounds of discussions with the information commissioner Mr. Jagadananda and the Chief information commissioner Sri Taruna Kanti Mishra. I found out that they are honest in their approach for the strengthening of the RTI regime in the state. But, they are unable to do so for certain orientations enlisted below:

Complaint Case No. 1951/2010

Ms. Tripti Chowdhury vs. PIO, School & Mass Education, Govt. of Orissa

Information sought through filing of RTI Application (Form-A) on 25th June 2010 with PIO, School & Mass Education, Govt. of Orissa

Information sought:

1. Status of application for modification of place of posting as contractual teacher (Hindi) of 2009
2. Engagement of Contractual Teacher (Hindi) 2009 under Inspector of Schools, Khurda Circle

The RTI Application was transferred to PIO, Inspector of Schools, Khurda on 30-6-2010

As no information was received in the stipulated period from the PIO, Inspector of Schools, Khurda 1st Appeal was made with the FAA, Department of Schools & Mass Education, Govt. of Orissa on 7-8-2010 which was subsequently transferred to Inspector of Schools vide Memo No. 15411 dated 25-8-2010.

Since the appellant didn't receive any information from the FAA, she filed 2nd Appeal with the Commission on 23-10-10 stating, "Since no information was received to my appeal within the stipulated time, hence, the appeal".

SIC served Preliminary Notice to Inspector of Schools, Khurda asking for Daily Progress Report on the RTI Application and submission of the report within 15 days of the receipt of the communication.

Hearing was held on 3rd May 2011 with the decision as follows:

Tripti Chowdhury has filed a Second Appeal petition dated 18-10-10 in Form E. There is however no order of the FAA filed with the Form E Application. In view of the above deficiency, it can't be entertained as a Second Appeal under the Orissa Information Commission (Appeal Procedure) Rules, 2006. However, the petition has been treated as a Complaint under Section 18 (1) of the RTI Act, 2005.

It is apparent from the record that the applicant though filed an appeal before the FAA, the appeal is still not disposed of. Therefore, the State Commission directs the FAA, Office of the Inspector of Schools, Khurda Circle, Khurda that:-

1. In case the First appeal dated 7-8-10 has not been disposed of by the FAA, he should dispose of the appeal by passing a speaking order in the matter, within 30 days from the date of receipt of this order and shall intimate about such disposal to the Registrar, OIC.
2. In case the FAA has already disposed of the First Appeal, he should furnish a copy of his order to the complainant within one week of receipt of this order

If the Complainant is not satisfied with the order of the First Appellate Authority, he is free to file a Second Appeal before the SIC under section 19 (3) of RTI Act, 2005

With the above direction, the case is closed at the State Commission level.

1. The Act provides for establishment of burden of proof on the Public information officer (PIO) and the deemed PIO. But very often the commission deviates from this fundamental principle and seeks proof from the applicant. For example, if the applicant has the proof of submission of the RTI application but the PIO is ignorant of the application, then the commission directs the applicant to provide a copy of the same to the PIO which again may not be available with the applicant.
2. In many cases the PIO intimates the applicant the amount of fees to be deposited for the required information and the applicant duly deposits the fee or challenges the amount before the commission. But to our surprise, the commission instead of adjudicating the delay or over the disputed amount, suo motto gives a decision on the nature of information sought and takes a prejudiced stand that the information is bulky or doesn't come under RTI act. On questioning, the commission gives the standard reply that we cannot close our eyes while adjudicating. But, the law demands that they have to be objective on this point.
3. Urgency of early hearing has lost to the commission as the time taken for adjudication ranges from two years to three years. As a result the applicant feels cheated as he/she is most likely to get the information after two to three years and not within the mandated time as intended by the Act.

Sl. No	Case No. ¹⁹	Date of Information Request	Date of Final Adjudication
1	C.C No. 774/2009	28-03-2009	29-08-2011
2	C.C No. 194/2006	27-12-2005	5-10-2007
3	C.C No. 614/2007	15-1-2007	1-10-2008
4	C.C. No. 768/2007	31-3-2007	21-10-2008
5	C.C. No. 1209/2008	29-3-2008	21-3-2011
6	C.C. No. 1061/2009	27-7-2009	17-1-2011
7	C.C. No. 125/2007	21-12-2006	6-9-2007
8	S.A. No. 70/2007	15-12-2006	7-8-2007
9	S.A. No. 175/2008	12-1-2008	9-2-2011
10	S.A. No. 213/2008	28-1-2008	22-2-2011
11	C.C. No. 1307/2008	20-6-2008	24-5-2011
12	C.C. No. 1758/2008	2-9-2008	20-5-2011

¹⁹ Source: [http://orissasoochanacommission.nic.in/Important Cases decided by OIC](http://orissasoochanacommission.nic.in/Important%20Cases%20decided%20by%20OIC)

Although the commission is the key to ensure a functional RTI regime in the State, still they are to accept the open regime and the inevitability of the transparent governance. We asked for the case files to go through it for the present study on RTI. Mr. Tarun kanti Mishra, the Chief Information commissioner forthrightly ordered to give his files to me but the other two commissioners were reluctant to allow us to see the files. My request forwarded through the Secretary of the Commission is yet to be decided upon by the two information commissioners and I am still awaiting the response (As a result the case records of Hearings by the Chief Information Commissioner could only be perused for 10 days in the presence of Court Master).

The commission's orientation is more towards reconciliation rather than towards penalty. Very often the applicant gets the information after a long delay but the commission decides not to penalise the official concerned if he has made an initial communication within the stipulated time notwithstanding the content of the communication. This practice has encouraged the officials to reject the information request on any frivolous ground and thereby delay the supply of information to the detriment of the applicant. This is the precise reason of decreasing application of RTI.

Complaint Case No. 1318/20088

Mr. Ajita Kumar Sahoo vs. Nayagarh District Central Co-operative Bank Ltd.

Information sought through filing of RTI Application (Form-A) on 10-3-2008
Information sought:
1. Action Taken on his (Applicant's) letter dated 20-11-2007
2. Action Taken on another letter dated 17-7-2007
There was no information from the PIO. The Applicant filed 1st Appeal with the FAA on 9-6-2008. There was no communication from the FAA as well.
Applicant filed Second Appeal with the SIC on 2-9-2011 stating, "The information sought for is not at all given to the applicant which is illegal, arbitrary and amounts to refusal to supply information which is liable to be set aside and direction to supply the information sought for may kindly be issued"

SIC served Preliminary Notice to PIO, Nayagarh District Central Co-operative Bank Ltd. on 19-1-2011 asking for Daily Progress Report on the RTI Application and submission of the report within 15 days of the receipt of the communication.

The PIO in his communication to the SIC states, " As per the direction of Hon'ble Chief Commissioner on 28-1-2011, Joint Meeting was held in the office chamber of the Secretary, Nayagarh District Central Co-operative Bank Ltd. relating to Case No. 112/2009 and Complaint Case No. 1318/2008 filed by Sri Ajita Kumar Sahoo, petitioner. The matter was discussed in the above cases and finally the petitioner Sri Sahoo agreed that he has already received the required information with full satisfaction. Xerox copy of the proceedings of the Joint Meeting held under the Chairmanship of the Secretary of the Bank dated 4-2-2011 is enclosed for your kind information.

Hearing was held on 5th May 2011 with the decision as follows:

Complainant Mr. Ajita Kumar Sahoo is absent on call.

Complainant Ajita Kumar Sahoo has filed Form-A Application dated 10-3-2008 seeking some information regarding action taken on his letter dated 20-11-2007, another letter dated 17-7-2007 from Raj Kishore Sahoo and some other information. Since he didn't get the information he sought, he filed an appeal before FAA on 9-6-2008. Aggrieved over the matter of the FAA, he approached the Commission with a Second Appeal deficiencies, was converted into a Complaint Case under Section 18 (1) of the RTI Act, 2005.

The Commission heard and perused records. The PIO produced before the Commission the copy of proceedings of a meeting held with the Complainant Ajita Kumar Sahoo. This Meeting was held in the office of the NDCC Bank. This was attended on 4-2-2011 by both the Secretary and the PIO of NDCC, the Secretary, Dimisar Service Co-operative Society and the Complainant himself. In fact, the Commission had directed such a meeting in connection with another case namely Second Appeal bearing No. 112/2009. The meeting was fruitful and it is noted from the proceedings of the meeting that Complainant Ajita Kumar Sahoo had received the required information in connection with the present Complaint Case No. 1318/2008. It is recorded in the proceedings that Complaint Case No. 1318/2008 may be dropped and the Complainant is satisfied.

Since the Complainant is absent today in course of hearing, it is assumed that he is satisfied with the information he received and that he has no further grievances. Accordingly, the case is closed.

Preliminary notice, record management, registration, copy of interim orders

The adjudication process in the state information commission is suffering from following procedural lacuna:

Any complaint or appeal submitted to the commission awaits registration for three to four months and there is no acknowledgement system available for the complaints and appeals received through the post or courier. It creates apprehension among the complainants and appellants about the status of their petition. Again as the hearing takes place after a gap of two to three years, the appellants throng the commission to query about their petition to the discomfort of the staffs at the commission.

Although the commission has taken the administrative decision that they will give a preferential hearing to the public interest cases, in practice there is no procedure to identify the public interest cases. At the beginning the reception receives all the petitions in the same manner and the delayed registration is equal for all the cases. Then, the Registrar assigns the cases to the respective commissioners as per distribution of areas/departments and they put forth it for hearing. Only at the level of the commissioner, if he thinks it is a public Interest case then only he prefers an early hearing of the case. So it is mostly arbitrary and is quite subjective.

For hearing the Commission sends notice to both the parties. Very often the notice reaches to the PIO who has already transferred the application under section 6(3) of the RTI act and is in no way is responsible for the delay. To the contrary the Central Information Commission has a notice which is comprehensive and has an obligation upon the addressee PIO that if he has already transferred the RTI application to any other PIO then that another PIO must also be intimated to be present in the hearing. This not only saves time but also prevents harassment of the applicant at the commission.

The Commission very often defaults in providing the copy of interim orders to the complainants and the appellants. It deters the parties to put forth their case properly as the hearings take place at long gaps. Even it reflects upon the judgement as the observations in one hearing are found absent in the subsequent hearings.

It has been found out that very often the complainant and the appellants have sent some prayers, petitions or fax messages to substantiate their arguments or to seek time to file replies and

those papers are missing from the case records. Similarly, record management in the commission is not up to mark as there was no space for record room and no information management system was available with the state commission.²⁰²¹²²

Pendency

Sl. No	Year ²⁰	Complaint Cases u/S 18 ²¹				Second Appeal u/S 19(3) ²²			
		Opening Balance	Received	Disposed of	Closing Balance	Opening Balance	Received	Disposed of	Closing Balance
1	2006	-	644	309	335	-	202	108	94
2	2007	335	1972	381	1926	94	437	152	379
3	2008	1926	1973	527	3372	379	370	129	620
4	2009	3372	2557	886	5043	620	373	132	861
5	2010	5043	3344	1570	6817	861	421	273	1009

Pendency has been a daunting problem with the State Information Commission. More than ten thousand cases were pending with the commission by March, 2011. It reflected upon the justice delivery system and the public were greatly demoralised to file RTI applications as the hearing took place after a long time of filing a petition with the commission. As a way out, the State Information Commission has resorted to remanding the complaint cases to the first appellate authorities. As a result the pendency has declined to near around 6000 cases in the last six months. But this process although reduces the burden upon the commission is not appreciated by the information seekers. Because the decision to remand also involves the decisions like;

1. not to penalise the officials ;
2. not to account for the delays already faced by the applicants;
3. leverage to the officials in the face up between the two parties;
4. unnecessary delay at the commission even though it was to be remanded;
5. further delay if the first appellate authority fails to provide the necessary information.

²⁰ As on 31st December of each year

²¹ Source: <http://orissasoochanacommission.nic.in/Year-wiseDisposalofCases>

²² Source: <http://orissasoochanacommission.nic.in/Year-wiseDisposalofCases>

STATE INFORMATION COMMISSION AND THE PUBLIC AUTHORITIES

The Public Authorities are the primary domain where the information is available and for all public purposes the common man tries to seek accountability from the authority. It is to say that right to Information Act has been a tool to prepare the public authorities to open up and supply necessary information to the citizens as an element of transparency and accountability. Whether it is the public distribution entitlements or the old age pensions or implementation of NREGA or FRA, the problem faced by the common man is the secrecy that wraps the dealings of the officials at different offices which compels the entitlement holders to bribe or secure favour with the officials to expedite their case or win over the award through unfair means.

To give a body blow to corruption, red-tapism and to ensure that the official discretion is minimised, right to information act has provided for an elaborate system for the public authorities. The Act ensures that all dealings, programmes and functioning of the public authorities will be done openly and the citizen can scrutinise it at any time through inspection, asking for photocopies of records or samples of the material components. But, to our dismay many of the public authorities in the state are yet to adapt to the RTI regime. They are yet to implement the mandatory provisions of the Act that are very essential and fundamental to the RTI regime. For example, the act requires that the public authorities will be appointing the public information officers within 120 days of enactment of the RTI act and they will be preparing the information under suo motto disclosure within that date, but there are many institutions and organisations yet to implement the statutory provisions. As a result the public is finding it more difficult for accessing information and in turn to establish accountability from the authorities and the officials.

Here comes the role of the information commission as the umpire to guide the public authorities as well as discipline them to fall in line of RTI. So far Orissa Information Commission has tried on many occasions to advise the public authorities to properly implement the RTI obligations and also prodded the appropriate government to take administrative measures to discipline the public authorities about their RTI compatibility. But, it is of little effect as most of the offices

are yet to prepare suo motto disclosure in a people friendly manner and are not ready to share information as the colonial hangover of secrecy is yet to over.

The RTI activists and general public are dissatisfied with the Commission as it has failed to compel the public authorities to change their attitude towards the right to information regime and on complain also the commission has not taken any exemplary measure to bring in the desired effect. The commission's stand that they do not have any penal power against the public authorities for non implementation of suo motto disclosure does not hold ground with the public. Hence it is time to examine some of the issues that relates to the public authorities in the RTI structure and the experience of the information commission in that matter, so as to have a comprehensive understanding of the matter.

Public Authority, the definitional problem:

Section 2(h) of the RTI Act, 2005 defines public authority as any authority, body or institution of self-government established or constituted

- a. by or under the constitution,
- b. by any other law made by parliament,
- c. by any other law made by state legislature;
- d. by notification issued or order made by the appropriate Government, and includes any-
 - i. body owned, controlled or substantially financed;
 - ii. non-Government organisation substantially financed,

directly or indirectly by funds provided by appropriate Government;

Here, the problem is that the term "substantially financed" is not defined in the act. Again, organisations controlled by the Government but not financed find it difficult to accept the RTI prescriptions. The State information commission has been very selective about giving its opinion on the definition of the public authority.

Case Study 1: The state information commission declared that the electricity distribution companies are public authorities as per the definition of the RTI Act and are bound to give information under

the Act. But, the distribution companies challenged the order in the High Court and for a long time obtained stay on the order. Ultimately, High Court ordered in favour of the commission and declared the distribution companies public authorities under the Act. But again the companies have gone for the Supreme Court of India and the judgement is awaited. This shows reluctance on the part of the service companies to open up and be accountable.

Case study 2: A private school in Bargarh district declined to give information under the RTI Act. A guardian wanted to take photocopy of the answer sheets of his ward as he had scored very poor marks in the examination. On denial, the aggrieved person approached the commission but the Commission gave the judgment that the school is not a public authority as per the provisions of the Act. But, the applicant's argument was that as the school is being established and controlled under the law of the state it should respect the transparency norms under the RTI Act.

Thus the "public authority" definition is under scrutiny and yet to have a settled answer.

Public Authority and suo motto disclosure:

Section 4 of the RTI Act enjoins upon the Public Authorities to:

- a. maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network;
- b. publish within one hundred and twenty days from the enactment of this Act the particulars of organisation, function, duties and other details as mandated under section 4(1) (b) of the Act;
- c. Publish all relevant facts while formulating important policies or announcing the decisions which affect public;
- d. Provide reasons for its administrative or quasi-judicial decisions to affected persons;
- e. Provide as much information suo motto to the public at regular intervals through various means of communications;
- f. Disseminate information taking into account the cost effectiveness,

local language and the most effective method of communication in that local area.

This statutory requirement is the least complied aspect of the Act in the state of Orissa. Except the state secretariat elsewhere the self disclosure is yet to be fully implemented. Even in the Secretariat the disclosures are not as per the intention and design of section 4. The public find it quite tedious to gather information of general importance in suo motto manner. The public authorities are yet to realise the entitlement rights of the citizens about information. Neither they are willing to provide information nor are they adept at designing the information in a people friendly manner. As a result, many people look forward towards the Information Commission as the protector of the RTI regime to guide and compel the public authorities to come out with the self disclosures.

The Information Commission through numerous recommendations and meetings emphasised upon the government to take strong measures against the public authorities who are failing in their obligation to prepare the suo motto disclosure. Even the commissioners inspect the public authorities at times and prod them to implement the section 4. But, the commission is of the opinion that it cannot penalise the officials if the citizen could not get the information for lack of prepared suo motto disclosures unless asked for it under section 6 of the RTI Act. This stand of the commission has been criticised by the RTI activists and the public alike. Because in “Hari Om” case the Central Information Commission had penalised Rs 5000/- to the principal of the Aurobindo College for non implementation of suo motto disclosure after its initial advice to implement the same in a time bound manner. In Orissa, the Information Commission is yet to take a call on it. The absence of penalty for non-implementation of suo motto disclosure has resulted in very poor implementation of section 4 in the state. Even if it has been implemented at some public authorities, then the quality is very poor.

Present study interviewed officers in six public authorities in six districts namely Mr. Paramananda Prusty, DSW, Kandhamal; Mr. Bijaya Sethi, deputy collector of kalahandi; Mr. Pratap Chandra Beura, tahasildar, rairangpur, Mr. Nirangn behera, Tahasildar, Nabarangpur; Mr. Priyabrata Majhi, Asst. Prof. Ravenshaw University; Mrs Mamata jena, IIC, Angul. All the officials were unanimous that they need proper training to handle the RTI requests as well as the hand holding support to prepare the suo motto disclosure.

Transfer of applications from one public authority to another:

Section 6(3) of the RTI act tells that where an application is made to a public authority requesting for information:

which is held by another public authority; or

the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer.

Generally the public authorities transfer the application to the appropriate authorities if the application or part of it relates to other authorities. But the problem arises from the Information Commission as it interprets 'another' as only a single other public authority. So if the application is related to two or more than two public authorities then the Commission does not seek it to be transferred to both of them. But, as per the interpretation of Justice Shah, ex-judge of the Delhi High Court, in Civil laws singular and plural terms are used interchangeably i.e. another signifies not only one but also many. The state Commission is yet to accept this legal position in its application of section 6(3) of the RTI Act.

Second Appeal No. 341/2008

Nrusingha Charan Mohanty vrs PIO, Finance Department, Orissa & FAA, Finance Department

Appellant is absent on call (23-5-2011 Hearing)

Appeal dated 18-11-2008. Intimation to remove the defect on 19-9-2009.

Defect removed on 12-10-2009.

Information relating to UGC Scale Holder & State Scale Holder

The appellant couldn't get any information from the Finance Department since the letter mentioned in the Form-A application was not traceable in that department".

The Commission, therefore, directs that the appellant should furnish a copy of the letter referred to his Form-A application to the FAA within 30 days. On receiving this, the FAA will consider the matter as 1st Appeal & furnish permissible information with regard to the RTI application.

In case some information is not available with the Finance Department and is held by another Public Authority, the application should be transferred to such Public Authority. If there are more than one Public Authority, the appellant should approach such Public Authorities directly with separate RTI applications. In so far as Finance Department is concerned, information should be supplied to the appellant, free of cost, under registered post within 30 days of his approaching the FAA. Case is closed (Decision on 23-5-2011)

Again, the Commission rarely takes into account the delay committed in transferring the application u/s 6(3). The public authorities transfer the RTI application at times to other public authority without application of mind or only to shift the burden of supplying the information to the field office or sister organisations. In both the cases i.e. delay in transferring or wilful transfer of the application to other PAs, the Commission has been lenient to take the officials concerned to task. It has developed a kind of carelessness among the officials to transfer the application in the prescribed period of 5 days or not to transfer it without application of mind. In some cases it is pitiable to see that in the same department under the same roof, one section transfers the application to another section and the process goes on. It is a direct violation of the provision of the section 6(3) of the RTI Act. But, the commission seems not to be bothered about this aspect of the wrongful application of the well-meaning facilitating provision.

STATE INFORMATION COMMISSION AND THE RTI APPLICANTS

In a state like Orissa where governance is yet to come to a level of efficacy and in the contradictions of the mingling interests, the common man was euphoric about the advent of the transparency and accountability tool called the RTI Act. The social activists, concerned citizens as well as progressive section of the society came together to spread the awareness about the Act among the masses of the state. The Information Commission as expected also joined the effort and facilitated trainings through NYK, NSS, Govt. Training institutions, CSOs. World Bank, DFID, Concern Worldwide, Action Aid, CWS, UNDP, OXFAM etc. funding agencies also put their weight in the awareness and advocacy campaign surrounding the provisions of the Act. State Institute of Rural Management (SIRD) also took the responsibility to train the representatives of the Panchayatiraj Institutions for better appreciation and working of the act at the grass-roots.

As a result we find a significant increase in the number of RTI applicants in the state in the initial years i.e. in 2006-07 and 2007-08. But lately, the euphoria around the expectations on RTI seems to be missing from the state. Although the number of applications is on ascendancy, RTI activists admit that the people are slowly resigning from the hope for a transparent administration and accountable governance with this transparency tool. The reason is manifold, but the most crucial one is the role of the information commission and the experience of the applicants with the commission. The applicants expect that the Information commission as the custodian of the Act should take a very proactive role in strengthening the RTI regime in the State. It seems that the things are not moving on expected lines. The interface between the information Commission and the applicants can be analysed under the following headings.

RTI as a tool of grievance redressal

The RTI applicant although knows that the Act is meant for access to information hopes that through seeking information he will be able to solve his problem. There are numerous success stories in the state which substantiates these expectations. As a result increasingly, people look forward to the RTI act as a grievance

redressal mechanism. But, the use of RTI in such a manner requires intelligent asking for information. Very often the applicant fails to seek the information in a proper manner and the grievance remains unaddressed. Then he proceeds to the commission u/s 18 as a complainant or u/s 20 as second appellant and expects that the commission will solve the problem. But the same is not within the legal ambit of RTI Act and hence the commission cannot do anything about it. Here, the commission is perceived in a negative light.

At times, the applicant has a probing application but the authority denies sharing the information and thereby the problem remains unsolved. Here the Commission could have played a role to the advantage of the applicant, but in its interpretation that 'RTI Act does not permit to ask questions' it has somehow limited the avenues of grievance redressal and thereby the interests of the common man.

Cost to the applicant

Although the fee for RTI application is only ten rupees, at times it becomes very expensive during the course of access to information. If the PIO does not provide the information in time and the case drags on at the commission for multiple hearings, then the expenses become significant for the applicant. Therefore very often the applicant remains absent in the hearings and the commission has to rely upon the version of the PIO for the adjudication process. It provides scope for the officials to misrepresent the fact of the case and take *ex parte* decision on the matter under consideration.

As there is no clear provision on the compensation aspect and the applicants are not aware about the civil suit provision, they very often fail to ask for the compensation in their petition. Even if it is asked for, then the Commission in the absence of any standard norm on awarding the compensation has been intransigent in it.

Exorbitant information fee

Many times to discourage the applicants the PIOs charge unreasonable fees for the information. There are cases where for small number of pages the PIO has charged high fees like PIO, Rairakhol charging Rs 4000/- for Pallisabha records, NRHM charging Rs 20,000/- for records of district plans, Rs 30,000 for PDS records of a village and Rs 700 for eight pages of information in Gunupur

block. When the aggrieved applicant approaches the Commission then, very often the Commission orders refund of the excess amount if already paid or orders to provide the information at the appropriate price. But rarely does it order penalty on the official for wilful misinformation and cost free information to the applicant. As a result the deterrent necessary in these mischief are absent and the nonserious response is on rise.

Trial in the court room

Although a delayed hearing the petitioners get equal opportunity to put their version of the case before the commissioners. But this equality gets obliterated against the applicant through forged case records and multiple hearings. The applicants from various back grounds and from far off areas go through difficulties when there is multiple hearings. Again the plea of the PIOs and deemed PIOs like intimation through ordinary post or under certificate of posting in time as a ground to prove their diligence has a fatal impact on the entire case. Because very often they manipulate the records like despatch register and stamp register which are generally maintained at a later date. There are cases where even if the applicant has asked for information through registered post, the PIO claims that he has sent the intimation through ordinary post and the same has been accepted by the commission innocuously. As the RTI regime thrives upon these little evidences, it becomes difficult for the applicants to counter these planted defences. Hence, the Commission has to do the extra work of safeguarding the interest of the citizen who is very often lacks knowledge of the governmental functioning.

Attacks on the RTI applicants

In Orissa rise of attacks on the RTI applicants in the form of assault and hoisting of false cases has been on rise. Mr. Srikanta Tripathy an applicant from Gediapalli panchayat was threatened and a false case was filed against him by the panchayat executive officer for obstructing him while in duty. Mr. Jyotiram from mayurbhanj district went to inspect suo motto disclosure in the town thana with a group of public. The IIC not only manhandled him but also put a counter case against him for which he is out on bail. Not only applicants but also PIOs are also victimised for supplying information against the wishes of the higher officials. The salary of the agriculture officer of Keonjhar district was stopped by the director, agriculture as he gave

information to an applicant against the wishes of his officer.

In all these cases the role of the Commissioner is very discouraging till now. They took it in a routine manner and stop after writing to the appropriate authorities. But of late the Chief Information Commissioner has shown interest to take up the cases but it is yet to bear any result in preventing atrocities on the RTI applicants and willing officials.

CONCLUSION & RECOMMENDATIONS

The study has identified various problems hindering effective functioning of the State Information Commission. All the stakeholders; the complainant/appellant, the RTI activists, the public authorities, the staffs at the commission, the information commissioners and the government have their own way of looking at the gaps and accordingly; there are prescriptions to solve it. That apart, the analysis of cases and outputs from various consultations has resulted in some concrete suggestions to fortify the RTI regime as well as ensuring transparent and efficient functioning of the State Information Commission.

For the Information Commissioners and the Chief Information Commissioner while availability of quality manpower is a major problem hindering their work; for the staffs, workload and under payments is the root cause of maladministration in the commission. Again some staffs alleged non-performance on the part of the Information Commissioners as a cause for underperformance at the state commission. For the activists and the complainants/appellants inefficiency of the commissioners, pendency of cases as well as leniency towards the officials in case of default is a major cause of failure of the commission. For the Public authorities lack of resources, training and orientation is the cause for non-supply of information. With all these depositions to our structured questionnaires as well as unstructured deliberations, we can arrive at some recommendations with respect to the different stakeholders as follows:

Information Commission

1. Efficient staffing at the Commission is a key to reduce pendency. Recruitment of staffs through service provider at a meagre salary is a deterrent in the way of engaging quality manpower. Hence, this adhocism needs to be removed.
2. The Commission should develop proper norms at each stage of processing a Complaint/Appeal like time taken to register a case, time to issue Preliminary Notice, time for hearing and maximum number of hearings in a particular case to address the issue of pendency.
3. Copies of Interim Orders of the Commission must be provided

to the parties to ward off the apprehensions of discrepancies between court room deliberations and final order of the Commission.

4. Remanding back of complaints to the First Appellate Authority (FAA) routinely must be stopped and it should be disposed of by the Commission itself when there is an element of delay by the PIO or where there is compensation demanded by the Applicant.
5. Even if the Complaint is remanded, then it must be remanded to the First Appellate Authority (FAA) within a period of 15 days and not after one or two years as is the practice in the State Information Commission, Odisha.
6. The system of Preliminary Notice must be resumed at the Commission as it puts the Public Authority immediately on notice and helps the Applicant to get information even if the hearing is delayed at the Commission.
7. The Notices & Orders of the Commission must be standardized so that it has all the essential elements of a proper Notice/Order like; dates, causes of chargers, relevant sections of the Act, date of compliance, reasons for penalty or non-penalty etc. In this regard, the State Commission can follow the Central Information Commission as they have a practice of better Notices/Orders
8. The Commission must change its orientation of putting the Applicant into the question box. Instead it should follow the Act strictly & should seek the burden of proof from the Public Authority.
9. The Commission by now should declare that suo-motto disclosure by the PAs under Section 4 (1) b is mandatory and sufficient time has passed for its implementation. Hence, any future complaint/appeal regarding absence of section 4 (1) b will be treated as “non-supply of information and accordingly penalty will be imposed on the Head of the Public Authority.
10. The State Commission should have consultation with other Commissions and adopt the best practices followed by them.
11. The Commission must undergo periodic self-assessment and take necessary steps to fight inefficiency and stagnancy within.

12. There has to be Seminars and deliberations to understand various provisions of the RTI Act in its proper nuances and to adopt to court judgements and progressive interpretations.
13. Appropriate technology with regards to Information Technology (IT) and Information Technology Enabled Services (ITES) for better information management and early tracking of cases.

Duty Bearers

1. Proper staffing and adequate salary
2. Rational distribution of work load
3. Training & orientation for post-RTI regime and an open culture
4. Public display of role & responsibility of each staff on walls/ notice boards
5. Installation of a Complaint Box to receive complaints from aggrieved persons harassed by the staffs for any reason
6. Up to date suo motto disclosure on daily basis
7. Recording of daily performance of each staff and monthly performance appraisal report thereof
8. Zero tolerance of violation of norms set by the Commission to dispense justice under the RTI Act

Public Authorities

1. Provision of adequate finance to deal with Information and record management.
2. Orientation/Training on RTI for all staffs
3. Some PAs at the field level like the Panchayats, Tehsils & Block Offices must have budgetary provisions to implement RTI as they face more queries & handle information of general public interest.
4. The Commission should not resort to multiple hearings which is detrimental to the functioning of the concerned official
5. When there is a transfer of application under Section 6 (3), the Commission must not insist on the presence of the PIO who has transferred the application. Hence, notice for hearing must be

suitably modified to ensure the presence of the PIO to whom it is transferred in the first instance itself.

6. The First Appellate Authority (FAA) must be penalised if he/she is the cause of delay in supplying the Information.
7. For suo motto disclosure the Commission should make accountable the Head of the Public Authority as it is a collective responsibility and involves all the officials of the authority
8. The RTI performance should be taken into account in the Annual Performance Appraisal of the officials. Accordingly, a scheme of incentives and disincentives should be in place to encourage better performance under RTI regime.

Information Seekers

1. A transparent and public opinion based consultation process should precede the selection of Information Commissioners.
2. The Hearings & Decisions must be concluded within a maximum time period of 3 months and multiple hearings be avoided
3. The Decisions should reflect the deposition of the parties properly.
4. The Commissioners and Staffs must be properly oriented to deal with RTI cases impartially as per rules
5. Deposition of false evidence by the PIOs must be severely dealt with and action under Indian Penal Code must be initiated in all such cases
6. The Complainant/Appellant should be compensated by the Public Authority in all cases of delayed supply of information as the delay causes the petition and the onus is on the Public Authority.
7. With the increase number of attacks on the RTI activists, the government must ensure protection to the applicants at the earliest. For this adequate legal provisions must be developed.
8. RTI counters must be opened at each Public Authority to facilitate easy acceptance of RTI requests and to prevent harassment of non-receipt of application by different staffs.

9. Denial of Information on flimsy grounds or withholding of crucial information and part supply of information by the concerned PA, must be viewed seriously by the Commission and penalty should be imposed on the erring officials
10. Deliberate absence of officials from hearing should not be condoned. Either an arrest warrant should be issued for absence without intimation on the first hearing itself or an *ex parte* decision should be taken on merit of the case to prevent delay in dispensation of justice.
11. Very often the Commission orders to provide information to the applicant on a delayed date but no penalty is imposed on the concerned official. In all such cases the Commission should be compelled to provide the reasons for non-penalty which is very often absent in the Odisha Information Commission's order.
12. The Commission should not remand the complaints to the First Appellate Authority (FAA) if there is delay in supply of information or allegation of non-compliance of application or claim for compensation by the applicant.
13. The Commission should take legal recourse to collect the penalty imposed from the officials in a time bound manner.
14. There should be categorization of cases and issues relating to life & liberty must be heard on a fast track. Odisha Information Commission doesn't have any mechanism to process different cases as all applications are diarised in a common process.
15. The Commission should go for circuit hearings and hearings through video-conferencing to help the common man to get justice at his place.
16. The Commission should develop a rule to review its own decision on complaints of glare miscarriage of justice for suppression or misrepresentation of facts found out to be incorrect at a later date.

Apart from the above suggestions as a response to our study, we will also recommend for the following structural arrangements as has earlier been suggested by the state information commission and the studies mentioned under "Review of Literature":

1. The Central Government should provide full financial assistance to the state government to meet the cost of establishment and

proper functioning of the state commission keeping in view its evolving needs and to strengthen the infrastructure for voluntary disclosure of information by public authorities as mandated u/s 4 of the Act.

2. There appears no penal provision in the Act to firmly enforce implementation of the provisions of sec 4 of the Act which needs to be incorporated in the Act.
3. To obviate non-compliance of the provisions of section 5 of the Act by the Public Authorities, the state commission is to be statutorily empowered by introducing appropriate penal provisions in the Act.
4. The phrase “right of appeal” appearing in Section 19(9) of the Act needs to be deleted since it is inconsistent with the provisions of section 19(7) and 23 of the Act. Alternatively, it should be properly clarified in terms of the intentions of the framers of the law.
5. The contempt of court power should be available to the state commission to ensure effective implementation of the provisions of the Act.
6. Orissa RTI rule 2(1)(c) should be suitably amended to help the BPL applicants to get information free of cost (to a maximum limit of Rs 150/-) as intended by the RTI Act, 2005.
7. Declassification of records/ documents marked secret/ confidential etc. and to make these accessible to the citizens under the RTI Act, 2005.
8. To include an item on RTI in the agenda in every collectors’ conference and allot a prime time slot in order to have detailed discussion regarding the obligations under the RTI act.
9. To implement the guideline for inspection/review by the district collectors on RTI during their field visits and inspection of subordinate offices.
10. To take appropriate action to ensure that the NGOs which have been funded substantially by the State Government/ Central Govt. directly or indirectly designate Public Information Officers and First Appellate Authorities since such NGOs come under the definition of Public Authority as per Section-2 (h) of RTI Act, 2005.
11. To take up training for all officials designated under the RTI

Act, 2005.

12. To ensure that pro-active disclosure as prescribed u/s 4(1)(b) are made by all public authorities and to initiate suitable disciplinary action against the heads of defaulting public authorities.
13. Establishment of RTI Implementation Cell headed by a senior bureaucrat at the State level to monitor the reports/status on various issues related to RTI based on inputs from SIC and the Public Authorities.
14. SIC, Orissa needs to anchor re-organisation of record management system to promote information management, preparation of RTI ready plan (each Public Authority should do a self-evaluation and identify areas of improvements and budget requirements).
15. SIC needs to recommends the State government for earmarking of 1% of the funds of all Flagship Programmes for a period of five years for updating records, improving infrastructure, creating manuals etc.
16. Keeping in mind the issue of pendency, Information Commission need to look out for improving its performance through video conferencing, passing order on merit of the case without hearing, usage of software application for managing the processes at the Information Commission for improving productivity/efficiency in disposal of cases, drafting of orders, day-to-day office administration etc.
17. Organization of Multi-stakeholders' workshop at appropriate level engaging the civil society will enhance the interface of the Commission with the public leading to discussion on "issues & concerns" and strengthening of its functional aspect.

Questionnaire for Information Commissioner

1. Is pendency an issue with the SIC? If so, what are the measures taken by you to reduce pendency at the commission.
2. Has the Commission developed any norms to effectivize its functions? If so, what are they?
3. What would you like to term as landmark judgment? Provide copies of such landmark judgment.
4. Could you please tell about the average number of hearings & disposals?
5. Have you taken any step to reduce multiple hearings?
6. There is a concern expressed by the civil society that there is discrepancy between judgment & final orders by the Final Order. What is your response to such issue?
7. Remanding back of complaints to the 1st Appellate Authority as means of reducing pendency by the Commission if has been successful
8. The system of Preliminary Notice to the erring Public Authorities had helped the citizen in getting information. Commission has stopped the system of Preliminary Notice. What is your take on the issue?
9. In some of the judgments of the SIC, the date by which compliance should be made is not mentioned? How does the Commission ensure compliance with its orders?
10. It is found in the judgment of the Commission that the terminology "another" mentioned in section 6 (3) is being interpreted as "One Other". What is your take on it?
11. It has been observed that the Commission disposes the case in favour of the Public Authorities on instances where the complainant/appellant fails to make himself/herself before the Commission? What is your take on it?
12. What are the steps taken by the Commission to enforce Suo-

motto disclosure by the Public Authorities?

13. Process adopted by the Commission to reach out to the people in general
14. Steps taken by the commission to make the public aware about its activities (*For example; publication of Annual Report etc.*)
15. Does the Commission encourage and invite public opinion on its activities? If yes, what are the systems & mechanisms developed by the commission
16. Mechanism & frequency of OSIC holding consultation with Central Information Commission
17. Mechanism & frequency of OSIC holding consultation with other State Information Commissions
18. Best Practices adopted by OSIC as a result of consultations with Central & State Information Commissions
19. Best Practices developed by the OSIC
20. Steps taken by the OSIC to make its services IT-Enabled/ Automation introduced
21. Does the commission undertake periodic assessment of its performance? If yes, what are the process & procedures?
22. As per its own assessment, what are the major issues that lie with the commission and steps taken by the Commission to resolve those issues?
23. How does the Commission apprise the Government of its issues?

Questionnaire for Duty Bearers of Information Commission

1. Organogram
2. Flow Chart delineating roles & responsibilities of the responsibility holders (Registration of Complaint-Hearing-Judgment-Order)
3. Specific role & responsibilities of the duty bearers
4. How do you rate the SIC as a Public Authority under RTI Act? How does it fulfill its responsibility under RTI Act?
5. Mechanism developed for consultation among various organs

of the Commission

6. Process adopted by the Commission to reach out to the people in general
7. Steps taken by the commission to make the public aware about its activities (*For example; publication of Annual Report etc.*)
8. Does the Commission encourage and invite public opinion on its activities? If yes, what are the systems & mechanisms developed by the commission
9. Process adopted by the Commission to reach out to the Public Authorities
10. Best Practices developed by the OSIC
11. Compliance with Pro-active Disclosure & how is it updated
12. Steps taken by the OSIC to make its services IT-Enabled/ Automation introduced
13. Does the commission undertake periodic assessment of its performance? If yes, what are the process & procedures?
14. As per its own assessment, what are the major issues that lie with the commission and steps taken by the Commission to resolve those issues?
15. How does the Commission apprise the Government of its issues?

Questionnaire for Selected Public Authorities

1. Have you implemented Suo-Motto disclosure? If yes, Inspect it for quality
2. How many officials have taken training on RTI?
3. How many applications you have received till now? Provide, the month-wise statistics for the last one year?
4. How many applications have you disposed on time?
5. How many applications involve delay?
6. How many complaints or appeals have been filed against your office?
7. How many complaints and appeals have been finalized by the

Commission and how many are pending?

8. How many penalties have been imposed on your office?
9. Whether the Commission is a deterrent against non-submission of Information? In your opinion whether they are flexible or rigid? (Share Commissioner wise perception)
10. What is your perception about the applicants? Genuine/ Vindictive/Malicious
11. Your recommendations for improvement in the RTI regime
12. Your recommendations for the Information Commission to be more effective

Exit Interview for the Complainants & Defendants

Complainants/ Defendant

1. How many Hearings have taken place in your case?
2. Do you feel that so many Hearings are necessary or were required?
3. Does the Commission give scope to put your side of story?
4. Do you feel the Commissioner is partial?
5. Did you get intimation for the Hearing in time?
6. After how many days of appeal/complain you received the intimation for Hearing?
7. Do you think that after so much time the information will still be useful for you? (For Complainant only)
8. Give any suggestion if you have for the improvement of the Commission.