



Transparency Review

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RIGHT TO INFORMATION NEEDS TEETH

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RIGHT TO INFORMATION NEEDS TEETH

Reviews of 2007 recount the growing success of the Right to Information Act in redressing the grievances of citizens. Among them are prompt issue of passports, correction of land records, disclosure of unfair promotions, denial of pensionary benefits and similar cases of rectification of personal problems. Most of these relate to complaints of individuals, many of them government officials themselves. Their redressal makes little difference to the daily lives of the majority of our people.

A report from Assam towards the end of the year has a far wider social significance. It demonstrates how the Act can be used to expose the manner in which money and materials allocated to alleviate poverty are diverted into private pockets. An NGO, the Krishak Mukti Sangram Samiti, took weeks to compile the figures in the files of the public distribution system to bring out the huge diversion of sugar and rice meant for below the poverty line (BPL) families. It was kept for sale to private traders at the market price. Bribes were paid to departmental officials.

The massive diversion of funds for

alleviation of poverty throughout the country is no secret but hard to establish. The Assam NGO laboured for weeks to secure and photocopy the files to secure the facts. Its efforts were upheld by an upright State Information Commission. A Delhi NGO, Parivartan, established similar diversion of essential commodities two years ago. Reports on both disclosures appear inside. More such exposes are needed to bring home the dimensions of a social crime that makes the rich richer at the cost of the poorest of the poor.

But a crucial element in the process of social change set in motion by the Right to Information Act continues to be missing. Such exposes will have limited impact unless they lead to those responsible being named and punished adequately. It is hard to conceive of a worse crime than stealing food from the hungry. Yet, the only punishment we hear of seldom exceeds transfer. The inference that an entire network of corrupt officials and politicians is involved is inescapable. More exposes on the Assam model are needed to press the demand for punishment suited to the seriousness of the crime.

Letters To The Editor

I am impressed with the sustained work CMS has been doing. I am of the considered opinion that the existing structure of governance and its manpower do not inspire confidence that it can tackle terrorism, including naxalism and organized violence effectively. I am afraid that the terrorist outfits with different names are on the march and the State machinery is unable to contain them. We need urgent reforms viz., political, electoral, administrative and judiciary to re-vitalize Indian democracy to get the right person for the right job. Otherwise, we will be slowly giving to lawlessness, anarchy and civil war, God forbid!

P.P. Rao
Senior Advocate (Supreme Court)

I am a regular reader of "Transparency Review" since beginning and eagerly await the issue of this publication. Authenticity, candidness and accuracy are the hallmark of the articles which are very incisive. They are not only useful to interested readers but also provide guidance to the practitioners of transparency in general and RTI in particular like me. My ever best wish in this endeavour.

Dr. S.V.Joshi,
Chief Information Commissioner,
Maharashtra

AGENDA FOR THE THIRD YEAR OF RTI

■ Dr. N. Bhaskara Rao

Two years may not be good enough to judge the role of a path breaking legislation like the RTI Act in the process of deepening democracy, facilitating good governance and in empowering citizens. But it should provide enough insights to consolidate the gains, take correctives and take the implementation on a surer base.

The third year in the implementation of the RTI Act in the country should put to an end despair in the civil society groups about its effective implementation. The year should give momentum to their new initiatives by way of going beyond seeking information but follow up with a road map for action and redressal. Social Audit is a reliable activity to facilitate that process. RTI and Social Audit together help consolidate the RTI movement. And in the process any misunderstanding about limitations of the the Act itself in any quarter should give way to new efficiencies in the implementation of several developmental schemes like NREGS or NRHS. What Aruna Roy's Abhiyan is trying do in Rajasthan is a good example. Such efforts should be facilitated, not hindered.

A second breakthrough needed in the third year is to do with suo-motu initiatives under Section 4(1). Once district level operations of administration are computerized and various schemes implemented, this obligatory function becomes rather easy and the resulting promptness in response will enhance credibility of the functionaries and of governance itself. The massive computerization project of NICNET connecting various levels of administration with online and

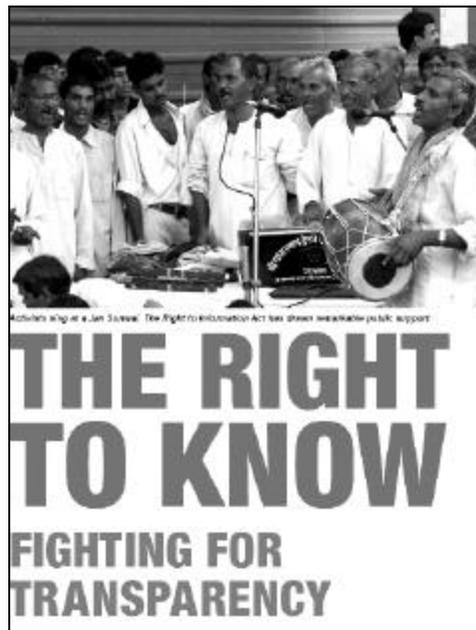
concurrent interactivity should be expedited. The Rs. 2300 crore supposed to have been allocated for this project, should facilitate this process further.

A third requirement is that political parties and political leaders should be less inhibited in promoting RTI. They need to be more proactive in lending their support to RTI implementation within their constituencies. Now that some leaders in Gujarat (during the recent election campaign) have acknowledged that they used RTI to elicit information about implementation of projects, politicians in other States should also realize the potential of RTI in strengthening democratic processes at various levels.

Fourth. The Ministry of Personnel and Administrative Reforms has done well by notifying that application fees could be paid in postal stamps. This should increase the number of applications from far off areas. It should enquire into the practice of appointing Information Commissioners because of their proximity to Chief Ministers. With some Commissioners reaching the age of retirement and the next round of appointments due in two years, that process should be more transparent.

Commissioners cannot have a second term. Also, the Ministry should clarify to local authorities that what the Act has provided for charging is only for photocopying not for salaries and such other demands, as is being done in some States.

Fifth. Some State Information Commissions (SICs) deserve praise for their initiative in implementing the Act despite initial limits and difficulties. Overall, they need to demonstrate their pow-



ers far more, to ensure that functionaries including PIOs, appellate authorities and the concerned departments function seriously. Threats to those who file applications under the Act should be dealt firmly. SICs should hold their hearings in regional centres rather than only in State capitals. Commissioners could also hold “public hearings” and enhance the reach and credibility of the Commission itself. The SICs should take initiatives in computerizing their own operations and be able to correspond in the local language and in a simplified way so that citizens need not look for legal counseling. The SICs should consider constituting, however informally, consultation forums with credible citizen groups from the grassroots. The Central Information Commission too should go out of New Delhi for holding its hearings. They could encourage local civil society groups to hold such open house meetings with Information Commissioners. The annual reports of SICs are yet to become regular for assessing the performance of the Commissions and reviewing implementation of the Act. Promptness in reporting to State Assemblies should be far more from the third year onwards.

Sixth. Some news media, if not many, have demonstrated how they could break stories using RTI Act. But the potential of the Act is far more. The RTI Act is a good opportunity to renew or revive the credibility of news media and help them go beyond conventional reporting and analysis. The RTI also helps young journalists to do serious and socially relevant coverage.

Seventh. To realize the potential of RTI Act, training is required at all levels and among all stakeholders. Such training is needed not only for those in the Government or the PIOs and appellate authorities but also for the civil society groups, those in the news media, the cadres of political parties and, even more urgently for elected representatives of Village Panchayats and Municipalities. The year ahead should see more concerted and structured efforts in this respect.

(Chairman, CMS)

The Government could support and encourage such initiatives.

Eight. The assessment of RTI Act at the end of the first year by CMS indicated that most of those availing the Act were in the system or with the establishment. Also, they use it largely for individual purposes rather than for common or community concerns. That assessment also brought out that more men were availing the Act and more in cities than rural areas. Awareness about the provisions of the Act was disappointing. There is urgent need for ongoing tracking of implementation of the RTI Act and as to who is availing and benefiting from its provisions. Periodic appraisal and evaluation of efforts are needed in the third year. All this should be undertaken independently, professionally and in a transparent way. The Department of Personnel has taken the initiative of commissioning an impact study. But when and what shape it will take needs to be seen.

Nine. The academic community at various levels has a special role. A coalition of academics, civil society groups and independent research bodies could make all the difference in making good governance a reality and democracy truly participative. Third year should see such coalitions coming into being and working together. Such coalitions could work as a guarantee for the success of the RTI Act in the country.

Tenth. The next year should see some examples of how implementation of provisions of RTI Act, particularly Section 4(1), reduces the workload of individual functionaries in the public utility departments, improve their efficiency and public appreciation of their working. This will lead to reduced corruption.

The third year should also be a year of much wider recognition and positioning of the RTI Act as a means for participative democracy, informed citizenry, active civil society, a better means for redressal a more responsible government and higher efficiencies in the implementation of massive developmental programmes. ◆ ◆

RTI EXPOSES PDS SCAM

■ Samudra Gupta Kashyap

Two weeks after an NGO, the Krishak Mukti Sangram Samiti (KMSS), used the Right to Information to expose corruption in the public distribution system and large-scale diversion of essential items meant for people below poverty line, an enquiry team has detected huge quantities of rice and sugar hoarded in Golaghat in Assam

Officials entrusted with probing the allegations has seized 9,719.50 quintals of rice and 1,811 quintals of sugar, which were illegally stored in a godown, supposedly owned by the Golaghat Wholesale Cooperative Society at Dergaon but believed to belong to a private trader. The officials toured three districts, including Golaghat, where the irregularities were allegedly committed. The godown has now been sealed.

Though officials refused to confirm the seizure, sources said a number of documents were also found proving that PDS items were being diverted from BPL beneficiaries to private traders, who in turn profited by selling these items in the open market. More seizures are expected.

While the Assam Government instituted a departmental probe on the basis of the KMSS charges, the Central Food and Public Distribution Department too has called for a report from the Assam Government on the matter.

Akhil Gogoi, General Secretary of the KMSS which is fighting for farmers' rights in Assam, who had used the RTI Act to gather the facts, told the media earlier this month that huge quantities of rice, sugar, atta, salt and kerosene oil meant for BPL card holders in Golaghat, Jorhat and Sivasagar districts were finding their way to the open market in the districts of Golaghat, Jorhat and Sivasagar.

He said that while between 60 to 70 per cent of rice meant for those Above Poverty Line (APL) did not reach the cardholders, huge quantities of rice meant to be distributed under the Antyodaya and Annapurna schemes among BPL families were also slipping out to the black market, Gogoi said. "We have dug out over 1.85 lakh photocopies of documents from the district civil supply officials and village panchayats, which, when analysed in a scien-

tific manner, have revealed massive irregularities in the public distribution system," Gogoi said, showing six stacks of documents to the media.

Gogoi and his team of 20 members spent over 45 days, working 16 to 18 hours a day to analyse the heaps of documents which they managed to extract from the authorities with a lot of difficulty despite making use of the Right to Information Act. "It was a difficult task. Though we used provisions under the RTI Act, officials at various levels tried to stop us from extracting information. I submitted my application way back on March 5, but the authorities relented only after we approached the State Information Commissioner," Gogoi said. He said he received the information only in October, which itself amounted to gross violation of the RTI Act.

He said while Golaghat district was allotted PDS items worth Rs 58 crore between April 2006 and March 2007, at least 2,719 quintals of Antyodaya rice and 5,425 quintals of BPL rice dispatched from the FCI godowns never reached the Samabaya Samiti (cooperative society) godowns. "This is just about the Antyodaya and BPL rice. There are several other items, including atta, sugar, kerosene oil and salt, which disappeared on their way to Samabaya Samiti. Moreover, the ordinary villager has been forced to pay more for the items against prices fixed by the Government," Gogoi said.

He claimed that while villagers testified that they were buying Antyodaya rice at Rs 4.50 to Rs 5 per kg against the fixed price of Rs 3 per kg, Samabaya Samiti secretaries and agents also admitted that they were selling items at higher prices. The quota of rice and other items for each family was also reduced at will by Samabaya Samiti officials in order to divert the food items to the black market, he claimed.

"Some of them said they paid bribes to supply officials at the district level. Several Samabaya Samiti secretaries gave us in writing that the district deputy director of civil supply took between Rs 3,000 and Rs 5,000 per month from them, while supply inspectors took between Rs 1,000 and Rs 2,000 per month," Gogoi said. "There is information that bribes go up to officials and political persons too," he added. ◆ ◆

(Courtesy: The Indian Express)

ACT NEEDS OVERHAUL, SAYS STUDY

The Right to Information Act 2005 was meant to lead us into a utopia of free information and pave the way to transparency and accountability in governance. Two years down the line, a study conducted by the Consumer Rights Education and Awareness Trust (CREAT) proves that we are far from this happy state.

The study, the findings of which were revealed at the two-day workshop on 'Implementation of Right to Information Act' organised by CREAT, National Law School of India University (NLSIU) and Commonwealth Human Rights Initiative pertained to districts in rural Karnataka.

The workshop brought together civil society organisations that have dealt with RTI and public information officers (PIO) to evaluate the current position and work towards making it more effective. The study may not have been conducted very scientifically, admitted Y.G. Muralidhar of CREAT, but is reflective of the general picture. B. Shivarudraswamy, Under-Secretary (RTI), Department of Personnel and Administrative Reforms (DPAR), answered queries on behalf of the Government.

The findings of the survey, which commenced in September 2007, deal with Sections 4(1) (a) and 4 (1) (b) of the RTI Act 2005. While the former section declares that all public authorities should maintain, catalogue and index their records, the latter states that details of the PIO should be made available. Sample data was collected through NGOs in 16 districts, taluks,

(Courtesy: The Hindu)

towns and villages across Karnataka. Out of 254 applications that were made to different public authorities only 67 responded to queries under 4 (1) (a) and 60 responded to 4 (1) (b). The study states that a lot of this information is incomplete and that most authorities do not even have their own websites.

While the Government issued circulars regarding the PIOs and Assistant PIOs and declared the appellate authorities, 111 public authorities were not aware of these notifications. Participants at the workshop complained about lack of any information about the appellate authority. Mr. Shivarudraswamy agreed that he was aware of places like Belgaum where authorities still quoted the outdated Karnataka Right to Information Act 2000 and said that the system needed to be reformed from within.

"I have several complaints pending with the Karnataka Information Commission against the DPAR, which is supposed to implement the RTI," said J.S.D. Pani of the Right to Information Awareness Forum. "Bureaucrats are not at all bothered, the system needs to be evaluated," he added.

While representatives of NGOs raised several issues like providing protection to applicants, PIOs talked about how people misused the Act by demanding voluminous information and harassing the officers. Mr. Shivarudraswamy agreed that there were several lacunae in the system, which can be set right by training public officers and educating the public about proper use of the RTI Act. ◆ ◆



This issue of Transparency Review contains selected articles and news items from earlier issues. They illustrate the distance we have traversed in a relatively short time through minefields planted by Ministers and bureaucrats long used to a regime of secrecy.

The first issue brought out the reluctance of officialdom to fulfill its responsibilities under the Right of Information Act 2005. We were fortunate in getting Aruna Roy to inaugurate the publication in which she described the achievements of the movement but emphasised that the journey had just begun. A detailed audit of the weaknesses in official arrangements by Shekhar Singh merits study because some persist.

Overall, we then get an impression of the early days of the great adventure. Accounts of the initial successes of the transparency movement in far corners of the country are combined with reports of bureaucratic obstructionism. Surveys provide a picture of public response and the adequacy of official preparations. The series of articles on the battle waged by the Government to keep file notings from disclosure is particularly interesting as an example of sustained public pressure.

PTI provides a survey of issues concerning right to information that made headlines during the years:

Touted as the "people's law" to bring about transparency in government working, RTI staggered through 2007 as the Centre refused to declassify files and clung on to the pre-Independence Official Secrets Act.

Right To Information Act initiated to dig out information far kept away from the public domain, however, made headway in that Central Information Commission extended its ambit to institutions affecting the economy and Indian missions abroad. Stock exchanges and corporates came under the RTI scanner and CIC received many applications from mobile operators and GSM service providers on licencing and spectrum allocation. The CBI lost out on its demand for exclusion from the transparency law and drew flak from CIC for irregular servicing and not keeping a list of cases.

Taking refuge in the law, the bureaucracy used it for redressal of personal grievances. Senior IFS officer Veena Sikri invoked RTI to question Shivshankar Menon's appointment as Foreign Secretary and Harish

Kumar Dogra to challenge his recall as High Commissioner to New Zealand.

The tussle between the Centre and CIC, which began in 2006 on the issue of the proposed amendments, continued through 2007 over file notings. CIC chief Wajahat Habibullah had the last word about the Centre being guarded about the file notings, saying "till amendments are brought into the Act, notings are very much part of information to be disclosed".

The fag end of the year saw the CIC order a search for the records of drafting of Prime Minister Atal Bihari Vajpayee's Independence day speech in 2002.

Bihar showed the country the way by allowing citizens to file RTI queries through telephone.

The law also sprang surprises for the judiciary when CIC allowed disclosure of file notings on elevation of Vijender Jain as Chief Justice of Punjab and Haryana High Court, but a full Commission bench put proceedings of courts and tribunals beyond RTI purview.

Though Prime Minister Manmohan Singh termed it the "people's law", an inquiry based on an RTI query acknowledged misappropriation of disaster relief from the PM's National Relief Fund.

The Centre initiated the implementation process of RTI legislation but rejected the Second Administrative Reforms Commission's recommendation for scrapping the 84-year-old Official Secrets Act, contradicting its very provisions.

The RTI was used to obtain details of safety tests for GM crops and getting a probe ordered into the mysterious death of Netaji Subhash Chandra Bose despite the Union Home Ministry's stand that it could cause unrest in certain parts of the country. The student community was disappointed with the CIC for not allowing disclosure of examination answer sheets. It said the transparency law could not be used as a guise for questioning government policies, details disclosed should not affect the nation's sovereignty and denied information on manpower planning of defence services and the fast-breeder nuclear reactor at Kalpakkam.

The CIC sought greater funds allocation for developing an effective structure and mooted integration of RTI framework with the National E-Governance Programme.

THE JOURNEY BEGINS

■ Aruna Roy

Six months into the implementation of the National Right to Information Act, we have stories of successes and failures, debates and complaints coming in from all parts of the country. Active e groups analyse the various sections, sub sections, rules and rulings



of the Commissioners of Information. Trainings and social audit processes, meetings, seminars, reports, campaigns, and debates in the legislature and in the media around the RTI are now regular occurrences. There is an ongoing debate about the hopes of the RTI Act has kindled and the deliberate attempts to scuttle its scope. In the debate about whether the national law will change the way our democracy functions or whether it is just a piece of paper, it is crucial that we take into account the foundations on which this law has been built. This decade of struggle and the use of the right to information in India, has been an interesting dialectic between legislative entitlements and their implementation. The the process has demonstrated the power of democratic participation of people in policy making and the delivery of services. It has been a long journey from the early days of asking to see the muster rolls for payment of minimum wages, to the current debates on the disclosure on file notings. This journey itself is significant and should lead us to understand that the passage of the national law is only one important phase in a continually evolving democratic process.

When minimum wages continues to be denied to workers who put in more than 8 hours of work on government works in Rajasthan, the people were forever struggling to prove that they were right. The administration continued to speak of 2 versions to the truth. Documents became vital to prove work done. Muster rolls and bills and vouchers became

important documents which were classified as secret by the local administration, endorsed by the whole bureaucratic chain. When they did eventually come out, there were dead people's names on the muster rolls and clearly verifiable fraud in the bills.

This small but significant demand for copies of

bills, vouchers and musterrolls, in village panchayats in central Rajasthan, triggered off a campaign for transparency and accountability in the use of public funds..When Sushila was asked by reporters and others in Delhi in 1997, why she needed the Right to Information, particularly as a semi-literate village woman from rural Rajasthan, she said, "When I send my son to the market with ten rupees, I ask for accounts. The Government spends millions of rupees for the poor. "Is liye - Mera paisa, mera hisab"... My money , My accounts !

The RTI has come as a simple tool to a people, fed up with the corrupt mismanagement of the ruling classes. The people need to know everything that is being done in their name. A democracy gives us that basic and inviolable right. If nothing else, we must at the least call the bluff of the hypocritical assurances made at the time of election, in assemblies and inParliament; invoke the rights we gave ourselves when we framed the Constitution.

When the people of Janawad applied to the Collector in 2001 to verify the numbers of ghost works painted on the Panchayat Board as required by the Rajasthan, RTI Act 2000, it took them one year to access the records. The Gram Sewak, ran away with the records and filed a writ in the High Court, in the dramatic finale! It was difficult to believe that the Administration did not know about it. What sent the administration into a panic about Janawad, as elsewhere, was not questions about budget allocations, but the details of a check dam billed thrice, a 25 year old Sub PHC billed afresh,

the Veterinary hospital on the first floor, the non-existent roads - a long endless list of non-existent works. This is all old hat but the freshness of this exercise was in the verifiable details of fraud, with a list of persons who under wrote the fraud, with signatures and seals ! When we see what is going on in the name of governance, many of us feel a great disquiet. There has been a range of reactions from common people- from a desire to plug ears, close eyes and running away - to armed revolution. This is how irate people have lodged their protest.

The frustration of facing injustice and inequality has a history down the ages. These questions in a generic term are not new. It is the rephrasing of the right to know what rulers and the ruling classes do, in small details in unexpected and seemingly innocuous places that has made a huge difference.

The people of Maharashtra refused to accept a weak Act that the State legislature first passed. Through a series of agitations they ensured that the Act was repealed and replaced with a far stronger RTI Act. The Maharashtra campaign served as an inspiration to the national effort to have effective legislation.

The weak and ineffective Freedom of Information Act 2002 has been replaced with the far more powerful RTI Act 2005. The bureaucracy that was resisting notifying the earlier Act has found its effort boomeranging as it has been compelled to implement this Act within 120 days of it being passed by Parliament, as part of the provision of the Law. It is not just a question of expenditure but also of policy and implementation. We need to know how the ruling elite manage or manipulate our lives through democratic institutions, national governments, international agencies and a plethora of structures. Without knowing the details, we are and will increasingly, be at the mercy of plans to restructure our lives fundamentally, by a system and many systems to which altruism is only a veneer.

Delhi 2004-2005. The Delhi Right to Information Forum and the Right to Water Campaign accessed over 4000 pages of documents under the Delhi RTI act to unearth the facts of World Bank pressure on the Delhi Jal Board to institute a particular model of

water reforms. The Delhi experience not only demonstrated the importance of information in the public domain to enable citizens to effectively participate in making choices, but also illustrated the importance of file notings and their vital role in understanding the process of decision making. This has helped make the current debate on disclosure on file notings more meaningful. It has also helped build an effective constituency for ensuring that they be not exempt. Despite a strong national law, violators have not only been officials but governments themselves. There are at least 10 State governments which have not appointed Information Commissioners, a large number of offices do not have an idea about who their Public Information Officers are. Citizens trying to get information are sent from pillar to post to deposit their application fee. Several State Governments have notified rules, with provisions in blatant violation of the Act. This has led many people to feel that the law is still born! But there are many counters to this to demonstrate how potent the law can be and how ordinary citizens can use it to ensure accountability. We go back to Beawar- the same area in central Rajasthan where the demand for muster rolls was denied outright only ten years ago. In 2005, on the 13th of October, after the National RTI Act was passed and implemented, Kaniram a 70 year old man, entitled to grain under the Annapurna programme, saw a group of people getting together to file applications for information in Beawar. He joined the group and filed an application, demanding to know why he had not got grain for the last year.

Not only did he get the backlog in under a week, but he got coupons for the next six months and the copies of the records he had asked for.

The Central Act provides for a penalty of Rs 250/- per day of noncompliance on the official responsible for it. To be paid from his, or her pocket ! This has led to officials providing information and drafting replies to people they would not even have acknowledged. There is a desperate attempt to meet the 30 day deadline and the people of this area, have had their first taste of accountable governance. In a country like India this is a huge step forward for democratic practice.



A PARIVARTAN OPERATION

■ Arvind Kejriwal

Triveni is a matriculate. She was shocked to discover that her ration shopkeeper was siphoning off rations meant for her by making false thumb impressions on cash memos in her name. Whenever she went to the shop, the shop would either be closed or the shopkeeper would say that there were no stocks. Triveni lives in a slum colony in East Delhi. She holds an Antyodaya card issued by the government to the poorest of the poor. In February 2003, she filed an application under the Right to Information Act asking for details of the quantity of ration issued to her as per record and copies of cash memos purported to have been issued to her. After a month, Triveni received a reply stating that she had been issued 25 kgs of wheat at Rs 2 per kg and 10 kgs of rice at Rs 3 per Kg every month for the last three months. The cash memos showed thumb impressions made under her name. As a literate woman, she always signs. Obviously, the shopkeeper had been drawing her ration by faking thumb impressions in her name. But now she was equipped with evidence to proceed against the shopkeeper. When he heard, the shopkeeper came to her house and pleaded with her not to take any action. Since then, Triveni is getting right amount of ration at the right price for the last year and a half. Nannu is a daily wage earner. He lives in Welcome Mazdoor Colony, another slum habitation in East Delhi. He lost his ration card and applied for a duplicate in January this year. He made several rounds of the local Food & Civil Supplies office for the next three months. But the clerks and officials would not even look at him, leave alone bother to tell him about the status of his application. Eventually, he filed an application under the Right to Information Act asking for the progress made on his application, names of the officials who were supposed to act on it and what action would be taken against them for failure to respond. Within a week, an inspector from the Food Department informed him that his card had been made and he could collect it from the office. When

Nannu went to collect his card next day, the Food & Supply Officer (FSO), who is the head of a Circle, actually offered him tea and requested him to withdraw his application since his work had been done. These are two examples of how the Delhi Right to Information Act, which provides for penalties for non-compliance (unlike Acts in some other States), enables the poorest citizen to secure his or her rights. Several hundred families in the slum colonies on the outskirts of Delhi have benefited. They are getting regular rations for the first time. But it has not been easy. Some officials and, behind them, the well-connected mafia that has been diverting the bulk of wheat, rice and other rationed supplies into the open market, continues to resist. Citizens, especially the poor and uneducated who are most vulnerable, need help of learn the procedures to access right to information.

The massive theft in Delhi was brought to light by jan sunwais organized by Parivartan, a local volunteer organization last year. When figures showing full supply to ration card holders from ration shop registers (secured under the Right to Information Act), were read out at these public hearings, women after woman from Sunder Nagri, Seema Puri, Welcome Colony and other resettlement areas waved their ration cards to show that they had not received them. Some 90 per cent of the rations had been stolen. After the jan sunwais, families in these areas are now receiving regular rations. But the food mafia is counter-attacking. Parivartan workers have been threatened. One young worker, Santosh, had her throat slashed last December. She ran a centre informing local people of rationing rules and how to make complaints. Others have been beaten up, in one case inside a Food

Department office. But public pressure has made a difference. Officials are more cooperative. One of the latest measures taken to promote transparency is an order opening shop registers to public view on Saturdays. The battle is not over for the food mafia has much to lose.



A PRELIMINARY AUDIT

■ Shekhar Singh

The Right to Information (RTI) Act of 2005 came into force from 12 October 2005. Despite it being in force for over five months, many of the institutions and processes required to make it work effectively are inadequate, inappropriate, or not yet in position.

Section 4(1)(b) of the Act obligated every public authority to publish various types of information "within one hundred and twenty days" of its enactment. This included details of the organisation, the power, functions and duties of its various functionaries, the decision making procedures in the public authority, standards and norms, rules and regulations, details of the documents and information held, description of committees and of involvement members of the public in its functioning, remunerations and budgets. Details of how to access information, including the contact details of all public information and assistant public information officers. On the completion of 120 days, very few public authorities had announced the required information. Most have still not, even after over five months of the Act being in force.

Sections 12 and 15 of the Act provided for the appointment of a Central Information Commission and of State Information Commissions. As these Commissions were not only appellate bodies but also empowered to Act on complaints, they obviously needed to come into existence at least from the day the Act came into force. Even the Central Information Commission was not in position on 12 October 2005 and very few of the State Commissions had been set up by then. Even today, at least ten States have not set up their Information Commissions and the Central Information Commission still does not have the staff to function effectively.

Selections for Information Commissions has also been a contentious issue. Section 12(5) of the RTI Act specifies that the Chief Information Commissioners and the Information Commissioners "shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, manage-

ment, journalism, mass media or administration and governance". Despite this, all the State Chief Information Commissioners so far appointed are retired Government officials. Almost all are retired IAS officers - one being a retired IPS officer and another a retired High Court Judge. Even in the Central Information Commission, the Chief Commissioner and three of the four Commissioners are retired bureaucrats.

There has been considerable public concern about this. The National Campaign for People's Right to Information has stated : "Being the appellate authority under the RTI Act, the Information Commission would be called upon to objectively adjudicate on disputes over access to information between the citizen and the Government. The disputed information could often be about matters that were under the charge of the retired civil servants, when they were in service. There would also be many occasions where the Commission would need to decide on releasing information that might embarrass erstwhile colleagues and subordinates of such retired civil servants. In these circumstances, being objective and appearing to be objective would be difficult.

"The Information Commission, through its orders and judgements, is expected to initiate a change in the mindset of the bureaucracy. Not only must the bureaucracy recognise and accept that the right to information is a fundamental right of the citizen, but they must also be prepared to justify their actions and decisions before the public. This is essential in a participatory democracy. Whether a Commission exclusively or overwhelmingly populated with former civil servants can provide such a leadership is doubtful. "While expressing preference for Commissioners who are not from the Government, the NCPRI is not against the appointment of all serving or retired Government servants. Care must be taken to ensure that those selected are truly eminent, suited to the job in hand and not made to adjudicate matters relating to their own erstwhile departments or charges." Public Information Officers (PIOs) and Assistant Public Information

Officers (APIOs) Many ministries and departments of the Government of India seem to have appointed multiple PIOs. This results in citizens having to run from office to office seeking out the correct PIO - sometimes in vain. There are also problems regarding people's access to PIOs. In many departments the PIO can only be met after a security pass has been obtained. In case the PIO is not in his/her seat, the security desk does not issue a pass. People have to sometimes wait for hours till the PIO returns to his/her seat.

There also appears to be a lot of confusion about the appointment of APIOs, both at the Central and State levels. The RTI Act says: "...every public authority shall designate an officer...at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, to receive the applications for information or appeals under this Act..."(5)2)). In many States and in some Central departments, APIOs are being appointed in the same offices where the PIOs are already located. Though there has been a welcome suggestion from the Department of Personnel and Training (DoPT), Government of India, to designate postal officers as Central APIOs, this suggestion does not appear to have been operationalised.

The RTI Act does not prescribe any application forms and enables a person to apply on plain paper, as long as all the required information is included. However, various ministries and departments of the Government of India and various state governments are either insisting on specific forms that they have designed (the Delhi Development Authority, for example), or are demanding information or documentation that is specifically prohibited by law (the Ministry of Home Affairs, for example, demands proof of residence with applications). This has caused a lot of hardship to the people and has also opened up an avenue for corruption. Fortunately, responding to a complaint, the Central Information Commission has now clarified that no department can insist on a form and must accept applications on plain paper. Let us hope this solves the problem.

The DoPT has not circulated any guidelines to Central/State Governments on the implementation of the RTI Act. Much of the confusion that we see today is due to public authorities being clueless, in the absence of such guidelines, on how to implement the Act.

Though the RTI Act (Section 6(1)) specifies that "A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed..." The corresponding rules specify that fee can be paid by cash, demand draft or bankers cheque. This does not facilitate the filing of applications through electronic means and is generally expensive and somewhat restrictive. There are also no provisions for paying the fee through electronic means, through credit or cash cards, or through telephone and SIM cards. In some cases, the cashier sits in a different office to the PIO and this results in applicants having to shuttle between one office and another, sometimes many kilometres apart, to deposit their requisition. Though the Government of India has prescribed a reasonable fee of Rs. 10 per application, many states have prescribed exorbitant fees of Rs. 50 and above, with equally heavy charges for photocopies. This is against the spirit of the Act, which lays down that the fee must be reasonable.

Though families below the poverty line (BPL) are exempted from paying any fee, there appears to be a lot of confusion about what would qualify as proof for considering a family to be BPL. As there is no official notification, many government departments are not clear what documentation should be accepted for the purpose.

There are widespread complaints of threats against applicants of sensitive information. These threats are usually from affected government functionaries and other vested interests. It is important for the Government to ensure that making threats against applicants for information becomes a cognisable offence, through appropriate amendments in the relevant laws.

There are Central public authorities all over the country. Also, people from different regions might like to seek information from Central Government institutions. It is impractical to locate all the Central Information Commissioners in Delhi, as is presently the case. Instead, it would be a good idea, as provided for in the law, to have them located in different regions to facilitate filing of appeals and complaints by people in that region.

There is an urgent need to train civil servants, at all levels, in the provisions and uses of the RTI Act. For the public, there is a need to publicise the

RTI Act, especially through the All India Radio and through regional newspapers. Though the government publicises so many other laws and schemes, very little publicity has been given to this Act.

Now there is no process by which members of the public and representatives of concerned movements can interact with the Government and give them

feedback on the implementation of the Act. There is a need to set up such a consultative process. Perhaps what is required is a National RTI Council, along the lines of State RTI Councils in Delhi and Maharashtra, with representatives from civil society groups, to formalise a periodic interaction and thereby generate regular feedback and suggestions for improvement.

(Convenor, National Campaign for People's Right to Information) ◆ ◆

SHOW CABINET PAPERS, SAYS CIC

■ Transparency Studies

Awareness about the power of the Right to Information is growing, thanks to the nationwide efforts of activists, the Central Information Commission has come out with a spate of decisions in the last few weeks, including a path-breaking order to a Central Government department to allow inspection of certain Cabinet papers. The order also asked the department to disclose the communication from the Central Vigilance Commission and the Central Bureau of Investigation in this particular case involving the appointment of the Chairman and Managing Director of Mahanagar Telephone Nigam Ltd. The CIC said that once a matter had been decided by the Cabinet the notings could be made public.

Invoking the Right to Information Act, the applicant, Mr. Anil Kumar, approached the Department of Personnel and Training of the Central Government alleging certain irregularities in the official's appointment and sought to inspect files pertaining to his confidential reports for specified years and clearances given by the CVC and the CBI from time to time. The Chief Public Information Officer of Public Enterprises Selection Board, which had the information sought by the applicant, gave him some information but Mr Kumar was dissatisfied and appealed to the Appellate Authority asking for certain documents. This was denied to him.

Then, Mr. Kumar approached the CIC which, after examining the documents did not find any irregularity in processing the paper for approval of the Appointments Committee of the Cabinet.

But on the question of disclosure of Cabinet papers, the contention of the Appellate Authority that since the matter was sub judice the information disclosure was not tenable. The CIC quoted the RTI to point out: "The material on the basis of which the decision was taken shall be made public after the decision has been taken and the matter is complete or over." Directing that the information relating to the action by the Department of Telecommunications, Department of Personnel and Training and the Appointments Committee of the Cabinet be given, the Commission also ordered the disclosure of the communication received from the CVC and the CBI "in the larger interests of the public and to establish credibility of the system" And more significantly, the CIC said "that in view of this and the fact that all public authorities are required to ensure transparency in their functioning," it directed the Chief Public Information Officer of the Department of Personnel and Training to allow inspection of relevant records and files, including the note prepared for approval of the Appointments Committee of the Cabinet within a fortnight. (The Order was issued on July 3,2006) ◆ ◆

RTI AND DEFENCE SERVICES

■ Admiral R.H. Tahiliani (Retd.)

Media reports indicate that the three Services would prefer to be out of the pale of RTI. Clearly there are areas of armed forces operational planning and execution, operational logistics and movements, intelligence gathering and R&D projects in cutting edge technologies which have to be outside the ambit of RTI as per Section 8 of the Act as the disclosure of information "would prejudicially affect the sovereignty and integrity of India" However two very important areas of procurement and personnel matters, should continue to be subject to RTI for the greater good of the defence services themselves. The largest amount of corruption takes place in procurement of weapons and logistics associated with arms purchases. This phenomena is not unique to India. According to the Transparency International estimates the total arms trade world over is 40 billion dollars a year. This is a mere one percent of total world trade. Corruption in the arms trade on the other hand accounts for about 50 percent of the total corruption related to trade. In our country we have examples of Bofors, HDW submarines, coffin scam, etc.

After Transparency International's sustained effort over five years, the Ministry of Defence has adopted the instrument of integrity pact to ensure transparency and corruption-free procurement. However the very first instance of procurement of the Scorpene Submarines, according to media reports, points to corruption, because of single vendor contract and absence of an independent external monitor. Three NGOs led by the Centre for Public Interest Litigation have filed a writ in the Delhi High Court. The prayer is for an investigation by an independent agency under the supervision of the Court. It is important that procurement of arm and armament stores is be fully transparent and subject to scrutiny within the ambit of RTI. The armed forces give of their best when the morale of the officers and other ranks is high. Morale is a function of good training when the young officers and soldiers are being trained

by instructors, many of whom are specially selected for such duties. However, training periods of necessity have to be short and good morale is maintained throughout one's service career if one has a feeling that in personnel matters there is justice and fairplay. Laying down policies of the norms for promotions, postings, etc. is the prerogative of higher command. These should be must carefully crafted and meticulously adhered to, if officers and men have to have continued confidence in the fairness of the administration. Then morale is likely to be maintained at high levels. In the armed forces we have a system that uncomplimentary remarks in the ACRs have to be shown to the officers being reported on and their signature obtained. This ensures that the reporting officers are careful and report objectively. Till the end of seventies I don't recall officers going to Court with a plea that they were denied promotion unfairly. Unfortunately this is no longer true. Apart from political interference which the Service Chiefs are duty-bound to resist. There is loss of faith in the fairness of promotion boards, which obliges officers to go Court. In mid 1970's two of my contemporaries in the Navy, (both are fine officers in my judgment) were cleared for promotion. Before they could be promoted they were taken off the select list in a subsequent board. Both of them, with great dignity, sought retirement and joined the Shipping Corporation of India. They probably earned a better living than friends like me who continued to climb the ladder. I never heard either of them say a word about how unjustly they were treated. This spoke well of the acceptance of the system with good grace. A lot of report-initiating officers do not take pains to report objectively on the strength and weakness of officers they are reporting on. In 1978 for the first time I was a member of a promotion board and I realized how important it was to report honestly. I went back and gave a pep talk to all officers in my command. During my visit to Hyderabad in mid eighties I was met by the Commandant of the College of Air Warfare. He said to me that there

must be something wrong in the Navy's promotion policies because one of his DSs (Directing Staff) was not cleared for promotion though in his judgment he was the best DS in the college. I asked him whether he had mentioned this in his ACR. He said no. I said, just state that. The officer was cleared in the next round. Because of the structure of armed forces, where a number of vacancies in senior ranks is few, promotion has to be on relative merit. The most important factor is how well this is brought out in pen pictures by the reporting officers. As CNS, my door was always open to officers who wanted to see me on personal matter. Most of their complaints related to being denied promotion. They said nobody had told them that they had any shortcomings. I would

(Chairman, Transparency International, India)

explain to them that in a needle-like higher rank structure for promotion, it became necessary to pick the best from among a lot of good officers. I would tell them examples of officers who had missed out in the first round and who eventually made it to the top. One of them became CNS and the other a Vice Admiral. These officers would go away feeling happy. They were thus convinced that there was no favoritism. Some of them even have been cleared for promotion by subsequent promotion boards. The importance of total transparency in personnel matters to maintain high morale and in procurement to save scarce resources cannot be over emphasized. These can only be assured in the Armed Forces by making these two areas subject to the provisions of RTI Act.

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Paperless Flow Soon

Filing and receiving information under the Right to Information (RTI) Act could soon be a paperless affair. The Central Information Commission (CIC) has proposed 'e-ministration' of Government Departments so that public records are accessible online and can be used to provide information under RTI.

When implemented, this would mean that a person can file an RTI application online. The department's Public Information Officer will be able to access government records on the internet and send a reply, also online, cutting down on delays and increasing transparency within the system.

At present, CIC is the only agency that receives online appeals under RTI. Bihar took a step in this direction recently by accepting RTI applications on phone.

Though the RTI Act has been in operation for three years, applicants continue to face delays in receiving rudimentary information. A proposal to harmonise the government's computerisation plan with the RTI roadmap has now been sent to the PMO. Chief Information Commissioner Wajahat Habibullah said the CIC was already working with the Ministries of Rural Development and Panchayati Raj to fast-track computerisation of

(Courtesy: The Hindustan Times)

records. "With this, we hope that not only will more information be available on the internet so that people will not have to resort to RTI but also that the information officers can access records faster. Storing of records in our system is atrocious and very often, files are mislaid or destroyed," Habibullah said.

He added that computerised records would translate to "easy access, quick retrieval and dissemination of information to the public".

The stumbling block in this process could be the fee that is required to be paid when an applicant asks for a large volume of information. "We are still exploring options but applicants can send the money through a postal order as use of credit cards or plastic money will require a separate system of checks and balances that we are not ready for," Habibullah said.

While the CIC will be working with Central Government ministries and departments, State Information Commissioners will be asked to work in consonance with district and panchayat-level administration for online access to records at the grassroots level.

The RTI watchdog will be meeting State Information Commissioners in October to discuss the issue further.

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A COMMISSION UNDER SIEGE

■ Vidya Subrahmaniam

EIGHTEEN MONTHS ago, Parliament passed the Right to Information Act (RTI Act), 2005. Hailed as a democratic coup, the United Progressive Alliance Government's showpiece legislation ventured where none dared to go - into the dark and forbidding world of India's secrecy-obsessed bureaucracy. The Act took practical shape with the constitution of the Central Information Commission - the final appellate authority vested with the powers of a civil court under the Act.



It was clear from even a cursory reading of the Act that an autonomous, proactive CIC - able independently to interpret its provisions - was the life source of the Act.

Yet currently the CIC is fighting two paradoxical battles. On one side, the Commission is up against RTI activists with whom it supposedly shares a common passion - for uncensored, unfettered information. The rights activists accuse the CIC, mandated by the Act to promote openness, of behaving instead "like a government." It might have been an obstructionist GoI department they were taking on instead of a free and transparent Information Commission judging by the charges: a general air of indifference, unacceptable delays in holding hearings, refusal to invite appellants to hearings, deliberate and repeated misplacement of applications, summary disposal of cases, reluctance to penalise erring Public Information Officers, gross misbehaviour with appellants, and so on.

If this seems an irony, consider who the Commission is fighting on the second front: the very government that created the RTI Act, and by implication the CIC. At the core of the CIC-Government turf war is a key question: who will interpret the Act? The Government's case, expressed repeatedly and emphatically by its nodal RTI Ministry, the Department of Personnel and Training (DoPT), is that the CIC's role is

essentially clerical, further that the Government must and will have the last word on anything and everything to do with the Act. In the course of a recent hearing at the CIC on the issue of file notings, Additional Solicitor General P.P. Malhotra argued that section 12(4) of the RTI Act, which empowered the Chief Information Commissioner and other Information Commissioners to act autonomously, was limited to executive functions such as "fitting coolers and air-conditioners or buying of furniture or stationery." Mr. Malhotra made it clear that the Central Government was not obliged to take instructions from the CIC even if this was meant to secure compliance with the provisions of the Act (section 19). Far from it; under section 30, "the Central Government and not the Central Information Commission" had the powers to "remove difficulties in giving effect to the provisions of the Act." Plainly put, the Government was not only appropriating the right to interpret the Act as it saw fit, it was asserting its superiority over the CIC by virtue of being the Government. The CIC is not amused.

If the situation calls for a spirited fight back, RTI activists are not obliging. Rights activists, who lined up behind the CIC in August 2006, when the CIC-DoPT face-off over file notings began, no longer empathise with the Commission. Activists Arvind Kejriwal and Manish Sisodia have instead taken their fight right into CIC territory by setting up a kiosk, a sort of alternative CIC, outside the

Commission's office in the Capital. The kiosk is a natural attraction for RTI appellants returning empty-handed from the CIC. Over the past month, the kiosk has collected some 200 complaints, 99 per cent of them accusing the CIC of deliberate inaction, some even insinuating a collusion between the CIC and the bureaucracy. An astonishing case they cite is of Pramod Gupta who was directed to file his appeal in the prescribed format. When he did that he was told to present four copies of the appeal. When he did that the CIC returned all four copies to him, admitting later that this was mistake and so why does he not go back where he started - to the same PIO who rejected his complaint. RTI activists have filed two cases against the CIC in the Delhi High Court, and plan to drag it to the court in at least 15 other cases.

A major grouse of the complainants as well as rights activists is that the CIC is loath to impose penalties on defaulting PIOs as compulsorily required by the Act. Says Mr. Arvind Kejriwal, "What distinguishes this Act and makes it enforceable is the penalty clause. In the initial days PIOs furnished information for fear of incurring the dreaded penalty. Today they no longer fear the Act thanks to the CIC's leniency with the penalty clause. If the bureaucracy is defying the RTI Act with impunity, the reason is the CIC." Commission officials admit that so far they have imposed penalties only in a small fraction of cases but say that these are early days, and soon they will be stricter with erring PIOs.

It does not help that the CIC has to contend with a hostile Government. The issue of file notings, over which the two sides took opposing positions, continues to fester. Through the CIC's first year in office, several division benches of the Commission had ruled in favour of file notings much to the chagrin of the DoPT, which insisted that notings fell outside the RTI Act and going on to explicitly state so in a posting on its website.

(Courtesy: The Hindu)

In August 2006, the confrontation enlarged into a full-scale war with the CIC's repeated instructions to the department to remove the "misleading" website posting. In response, the DoPT's legal department questioned the validity of decisions taken by individual commissioners, holding that the Commission's full bench must hear every case that came before it.

The CIC responded to the challenge by constituting a full bench, which on January 29, 2007, reiterated its long-standing position that the Act as it existed allowed file notings. At the hearing, the DoPT mounted an all-out offensive, questioning the CIC's power to interpret the Act, disputing its authority to issue directions to a department of the government, and insisting that it had acted within rights in putting up a website posting that contradicted the CIC's ruling on file notings. The website posting reflected the DoPT's view, the department's counsel said, adding, "It (CIC) cannot ban a public authority much less the Central Government from holding a certain view."

The DoPT's website posting continues to this day. Asked if it was the Government's case that file notings were a secret, Satyananda Mishra, secretary, DoPT, told *The Hindu* that this was indeed so. Mr. Mishra maintained that too much fuss was being made of file notings, which were irrelevant in the larger scheme of the RTI Act.

It is anybody's guess how this will go down with RTI activists who, in August 2006, successfully battled a proposed Government amendment to exclude file notings.

The pity is the CIC, bound hand and foot as it is, has taken some far-reaching decisions. Its principled position on file notings aside, in a landmark decision this week, it lifted the veil of secrecy surrounding the appointment of judges. The CIC ordered the disclosure of facts relating to the appointment of Justice Virender Jain as Chief Justice of the Punjab and Haryana High Court.



RIGHT TO INFORMATION SABOTAGED

■ Aruna Roy and Nikhil Dey

THE PASSAGE of the Indian Right to Information Act 2005 was hailed, almost universally, as a landmark piece of legislation that could change the relationship of the citizen with the state. It was considered one of the most progressive RTI laws in the world, with several provisions worthy of emulation. With widespread use, it had begun to be seen by citizen groups as a ray of hope to fight corruption, inefficiency, and the arbitrary use of power in an otherwise dark scenario.



However, just six months after the Act has come into effect, the Union Cabinet has approved a set of amendments, some of which will crucially damage the scope and power of the Act. The most critical of these relate to barring the disclosure of "file notings." Also Cabinet papers available currently after the decision is complete will now be barred from disclosure even after the decision is taken. As a result, the process of decision-making will be kept out of the public domain, making it far more difficult for citizens to participate in the process.

What is a government file and why this furore over not wanting to share file notings? To most laypersons the government file is a musty compilation of important papers. Almost all of India, even the illiterate, know it. Anyone who has had anything to do with 'babus' knows the significance and power the file holds to control the destiny of many people. The government file has two parts to it. The right side has the papers under consideration (PUCs). The left side has the 'notings,' the process through which opinions are written down, added to, and approved or disapproved. These notings reflect the deliberations on the PUCs and, through a series of comments, arrive at decisions. As the Chief Information

Commission has explained in a ruling on file notings: "Most of the discussions on the subject/matter are recorded in the note sheets and decisions are mostly based on the recording in the note sheets and even the decisions are recorded on the note sheets. These recordings are generally known as 'file notings.'" This trail of responsibility and accountability is what the babus do not want disclosed. The government now wants to amend the RTI Act so that file notings relating to most matters are under wraps. As ordinary citizens, we

will not have access to the reasons for decisions, many of them irreversible, that affect our lives. The paper trail, vital to establish a chain of transparency and accountability, will now be invisible. It will protect the dishonest manipulators but also give no support to honest officers whose forthright views are overruled, who have to suffer the ignominy of being party to a bad decision they disagreed with.

Although the Cabinet decision came without warning, it has been part of a design. This is revealed by a close examination of the consistent, extra-legal efforts of the bureaucracy to keep file notings opaque. Right through, from the period of the formulation of the Right to Information Acts at the Centre and in the States, the bureaucracy steadfastly fought against allowing access to file notings. This issue seemed to have ended in favour of fairly comprehensive transparency of the decision-making process with the passage of the Right to Information Act 2005.

The Act defines information under Section 2(f) as "any material in any form, including records, documents, memos, e-mails, opinion, 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." This is conclusive and the law should have dictated official action. However, the Department of Personnel (DoPT) decided to use the FAQ (frequently asked questions) section on its web site to override the law. In response to the question, "What does information mean?" the web site quotes the whole of section 2(f) and then arbitrarily adds the words: "but does not include `file notings' [S.2(f)]."

This could have been considered a misdemeanour of some junior official while drafting an FAQ - had it not been repeated in the manuals and FAQs issued by most State Governments. These FAQs and manuals have become the binding guide (at least in the matter of file notings) for officials responsible for providing information. Citizens across the country found their access to file notings allowed by law but overruled because of a departmental FAQ. Objections and reminders from citizens groups to the DoPT fell on deaf ears, and the matter was brought before the Central Information Commission in the form of an appeal. In its decision of January 31, 2006 in *Satyapal vs. TCIL (ICPB/A1/2006)*, the Commission looked at "whether file notings fall within the exempted class": It held: "no file would be complete without note sheets having `file notings.' In other words, note sheets containing `file notings' are an integral part of a file. Sometimes, notings are made on the main file also, which obviously would be a part of the file itself. In terms of Section 2(i), a record includes a file and in terms of Section 2(j) right to information extends to accessibility to a record. Thus, a combined reading of Sections 2(f), (i) & (j) would indicate that a citizen has the right of access to a file of which the file notings are an integral part." And further: "Therefore, we are of the firm view that, in terms of the existing provisions of the RTI Act, a citizen has the right to seek information contained in `file notings' unless the same relates to matters covered under Section 8 of the Act. Thus, the reliance of the CPIO, TCIL on the web site clarification of the Department of Personnel to deny the information on the basis that `file notings' are exempted is misplaced." This should have settled the matter. The Information Commission is, by law, the final

arbiter on matters of information. However, the Department of Personnel continued consistently to ignore the orders of the Central Information Commission. This startling sequence of events becomes clear from the July 13, 2006 order of the Commission in *Pyare Lal vs. the Ministry of Railway*:

"The Commission noted with serious concern that some public authorities were denying request for inspection of file notings and supply copies thereof to the applicants despite the fact that the RTI Act, 2005 does not exempt file notings from disclosure. The reason they were citing for non-disclosure of `file notings' was the information posted on the DOPT website [www.righttoinformation.gov.in] to the effect that `information' did not include file notings. Thus the DOPT website was creating a lot of unnecessary and avoidable confusion in the minds of the public authorities. The Commission had written to the Department of Personnel on 26th February, 27th March, 8th May and 26th May, 2006 for removing the restriction on `file notings' from their website. The DOPT regrettably had not acted on the issue so far. The Commission hereby directs the Secretary, Ministry of Personnel & Public Grievances, in exercise of powers conferred on it under Section 19(8) of the Right to Information Act, 2005, to remove the instruction relating to non-disclosure of file notings from the website within 5 days of the issue of this order failing which the Commission shall be constrained to proceed against the Ministry of Personnel."

The DoPT has not complied with this order passed by the Central Information Commission ten days ago to remove the file notings from the website. Could the order of July 13 have been the trigger of a sudden Cabinet decision? Section 8 caters to the often exaggerated concern about security, secrecy, and misuse of information for blackmail that has blocked and threatened the demand for transparency. It serves as an excuse for not being accountable. Even what is permissible under the law after the amendments will be under constant threat of denial. The recent campaign carried out by media and citizens groups in the `Drive against Bribe through the use of RTI' offered many insights into the working of the Act. One revealing aspect is how the slightest ambiguity is used by the system to deny information.

The Government has reportedly said it will

allow access to file notings on development and social issues. This will give the bureaucracy enormous powers to selectively rule on what is or is not a development or social issue. Files and records are maintained everywhere, from patwari and panchayat sarpanch onwards. We have had gram sevaks refuse panchayat information under the Rajasthan RTI Act, using the exemption of national security. PIOs will now find it very convenient to turn inconvenient information into a 'file noting.' We know that when people asked for work from the panchayats, even that simple demand got linked to decisions taken at the State, Central or Cabinet level. Policy at the highest level determines what will happen in the village.

(Courtesy: The Hindu)

This is one illustration of how Cabinet notes and papers affect the lives of millions of ordinary people. People have a right to see these papers, at least after the decision is taken.

Finally, it is not what remains, but what has been taken away by these amendments that we need to understand. The statement of Central Information Commissioner O.P. Khejriwal after the amendments were passed by the Cabinet sums it all up: "Information minus the file notings amounts to taking the life out of the RTI Act." For the energetic and rapidly growing Right to Information movement in India, this is a major challenge to see whether we can protect this nascent fundamental democratic right from being undermined. ♦ ♦

PIO CANNOT APPEAL

■ A.Venkataratnam, Goa CIC

Having been appointed on February 27 the Information Commissioner and myself had to wait almost one month for taking the oath of office before the Chief Secretary of the State, who is appointed by the Governor for this purpose. Even on the appointed day, we would have missed the oath-taking had we not taken the precaution of carrying our own copies of the proforma of the oath. This was followed by another two-month gap before a temporary office was made available to the Commission with only one Under Secretary and one peon. Another month passed by before office stationery, postage stamps and telephones were given. All this, after the mandatory and statutory provisions entrusting the responsibility of providing adequate staff and funds by the State Government. Hopefully, this will be solved in a few months.

The Commission has not allowed these constraints to come in its way. Not only it started hearing the cases after moving into the temporary office, it placed all its decisions, circular/ press notes and the mandatory RTI disclosures on the Internet. Here are around 20 complaints and 16 appeals till the end July before the Commission. Of these, 9 complaints and 8 appeals are already disposed off. Some of the

important cases that have been decided by the Commission are as follows:

The Public Information Officer (PIO) is not an aggrieved party under the Act and hence he cannot file a second appeal before the Commission against the order of the first Appellate Authority (setting aside the PIO's order refusing the information).

The accused in a criminal case, is a citizen, and has the same rights of a citizen to approach the authorities for the information in the case in which he is accused, as long as the information does not impede the investigation or his prosecution and is not prohibited by a court of law. The mere possibility of the accused getting the opportunity to cross examine the witnesses against him, does not absolve the authorities from disclosing the information requested by the accused.

Service particulars of a colleague in the Government requested by another Government servant are not personal information and are not covered by the exemption Section 8 (1) (J) of the Act. The Commission has started monitoring the designation of PIOs and Appellate Authorities by various public authorities in Goa. The Commission is also setting a time limit whenever it directs the PIO to furnish information and watches its implementation. ♦ ♦

THE BATTLE OF FILE NOTINGS

■ Ajit Bhattacharjea

The year 2006 will go down in history as the year when democracy became an actuality in India, when the equation between governor and the governed altered. It was the year that the innermost defences set up by an entrenched bureaucracy to protect their ultimate source of power - secrecy - were breached. The flag was lowered, surreptitiously and unannounced, towards the end of the year when their remaining missile, an amendment to the Right to Information Act, designed to be fired in the winter session of Parliament, misfired.

The last defence line was thrown round the most precious bureaucratic privilege, anonymity. The Official Secrets Act, imposed before Independence, had enabled officials to recommend or endorse any decision or action, secure in the knowledge that their role would not be exposed to public gaze. With increasing criminalisation of politics and administration, pressures to twist the rules were mounting. This could be done safely as long as the notes they initialled on the relevant files were treated as sacrosanct.

So, moves to enter this privileged ground under the protection of the Right to Information Act had to be resisted, leading to the great 'Battle of the File Notings' of 2006. Defence strategy was devised by the highest bureaucratic command, disguised as the Department of Planning and Training (DoPT). The defences were manned by the cream of the Indian Administrative Service, but their ranks had been undermined from within by renegade bureaucrats who took their pledge to serve the public seriously. The battle was joined early in the year when retired officials, placed in the crucial Central Information Commission, let down their side. They ruled that the right to seek information contained in file notings could not be denied under the existing provisions of the Act.

The DoPT took up the challenge the way it knew best, by trying to change the rules of the game, the existing provisions. A comprehensive amendment to the Act was drafted. Two of its provisions were designed to protect file notings; two others catered

to other administrative anxieties. Disclosure of file notings, except in social and developmental issues; and disclosure of the identity of individuals who put down file notings, were specifically barred. So were disclosure of information pertaining to any examination conducted by any public authority and disclosure of ministerial decisions 'till the matter is complete or over'.

Details of the counter-offensive leaked out after they were circulated to secure key allies. Among those roped in was the Prime Minister. He was persuaded to endorse the proposed changes as designed to "promote even greater transparency and accountability in the decision-making process". But the ammunition DoPT procured had a built-in defect; it exploded on the defenders. It was based on the strange argument that honest officers might suffer unless shielded by the amendment. The public saw it as a means to protect the dishonest.

Originally planned for the monsoon session of Parliament, then for the winter session, the amendment disappeared without trace. No reference to file notings was made by the President or Prime Minister when they addressed the National Convention to celebrate one year of the implementation of the Right to Information Act in October. It was mentioned by the keynote speaker, PC Alexander, a seasoned bureaucrat, but only to ridicule the suggestion that honest officers could be deterred by transparency.

Unwittingly, the DoPT had done a great service to Right to Information (RTI). The chain of angry statements and demonstrations it sparked demonstrated that the movement was unstoppable. The print and electronic media entered the fray. It also helped to publicise the campaign to expand the ranks of the movement with intensive two-week training sessions in cities and towns throughout the country to educate the public on how to deploy the RTI Act to check bribery.

The Battle of the File Notings was the most notable, but it was not an isolated victory. Successful skirmishes were reported throughout 2006. One of the most heartening came from

Naraini block of Banda, one of the most backward districts in Uttar Pradesh. No electricity, no roads, no bridge over flooded rivers, the villages were cut off. Conditions had not changed since Independence. But an application filed under the RTI Act demanding information about the District Magistrate's visit and the orders he had passed, and details of how the money allocated to the area had been spent, initiated action for the first time. The application was filed on July 1. Within a month, work began on an approach road, a bridge and on electric connections. A group of NGO volunteers had educated the local villagers on the procedure of utilising the RTI Act.

The Act came too late to help poor tribals of the backward areas of Orissa. But details of their plight in previous years, extracted by the RTI Act and reported in the press, revealed a high level of official persecution. Some tribals were fined for pilfering fruits and forest produce valued as little as Rs 2. Bullock carts and bicycles were seized for theft of produce valued at Rs 10. Such disclosures led to the

framing of laws to protect forest dwellers.

The poorest of the poor are getting some protection under the RTI Act. Applications for detailed disclosure of expenditure under the National Rural Employment Guarantee Act are discouraging the practice of expanding the number employed and reducing the wages paid.

Elements in the bureaucracy are fighting a rear-guard action to counter the transparency offensive. Applicants are being deterred by levying exorbitant fees for processing information. Penalties for delay are being overlooked. The biggest hurdle is for State Governments to ignore their obligations under the RTI Act.

In this, Ministers are involved. They, too, fear transparency. Information Commissioners are not appointed, or filled with retired bureaucrats known for lack of independence. Public Information Officers, the key officials who receive applications, are not designated. Adequate office space with secretarial assistance is not provided. A crucial battle was won in 2006 but the war is not over. ◆ ◆

Survey on RTI Awareness

A CMS field survey in three regions of Andhra Pradesh end of April 2006 brings out that an insignificant percent of people had heard of RTI Act - even after seven months after the Act has come into being as a much hyped (but least promoted) significant Act.

Heard about RTI Act?

Region	General Public		Grassroots Opinion Leaders	
	Yes	No	Yes	No
Telengana	3	97	31	69
Rayalseema	6	9	24	76
Coastal	7	93	57	43
<i>Source: CMS</i>				

Of those who had heard about RTI Act not all know about the provisions or even about scope of the Act. If opinion leaders themselves have not heard of the RTI Act, what can be expected from them and how can the Act be expected to be used to help a shift in the balance of power between those in power and those outside. Unless it becomes the route for transparency and accountability in governance at the grassroots how can the Act acquire its potential in the State?

Most of those who had heard about RTI Act, both among the general public and grassroots opinion leaders, knew something or the other, from newspapers; political parties were also mentioned as a source by five percent.

CIC BRIEFS

Compensation For Delay

In a significant order, the Central Information Commission has decided to compensate a person whose application was not taken up for hearing on the scheduled date. The CIC decided to pay Rs 500 as damages to Maj. P.M. Ravindran (Retd) for expenses incurred by him for preparing himself to appear before it in a case which was adjourned on the plea of the Registrar of the Delhi High Court who was a party in his application.

The Registrar had sought adjournment on the ground that the notice sent for responding the application was too short. The CIC realised that the notice for hearing being sent less than seven days before the scheduled date was in violation of the rules of RTI appeal procedure. "We find that this Commission has been in violation of provision of the RTI Act 2005 in notifying parties of the date of hearing which necessitated adjournment. The appellant is, therefore, entitled for compensation," the Chief Information Commissioner Wajahat Habibullah said.

Maj. Ravindran, through an RTI appeal in September, 2006 with the apex information panel, sought information about a pending petition with

(Courtesy: The Asian Age)

the Delhi High Court Registry free of cost as he was not provided the details within the prescribed period.

He also demanded rationalisation of Rs 500 fee as charged by the High Court for filing an RTI application. During the hearing, the High Court Registrar informed the Commission that a part of the information had already been provided to the applicant. The Commission allowed the contention of the Registrar, declining to supply a copy of the petition to Maj. Ravindran on the ground that a copy of ongoing judicial proceedings could not be provided until the closure of the judicial proceedings.

The CIC was also informed that the fee for seeking information has been rationalised and stood at Rs 50.

In another case, the CIC has asked the Indian Institute of Management, Bangalore to categorically specify procedures for selection of disabled candidates. Bangalore-resident Vaishnavi Kasturi, a visually handicapped person, after failing to make it through to the prestigious management institute, had filed an RTI application. ◆ ◆

"Information" Defined

The Central Information Commission (CIC) in its full bench decision has held that a public authority is obliged to provide access to information to a citizen but it is not obligatory on the part of the public authority to create information for the purpose of its dissemination.

Complainant Vibhor Dileep Barla sought certain information from Central Excise & Customs office, Nashik, regarding pending excise dues of a private company as well as some other units and premises. The Excise Department provided information about total excise dues but refused information about other units and premises on the

(Courtesy: The Indian Express)

grounds that information sought were questions made in the form of an inquiry and, therefore, do not fall within the ambit of RTI Act, 2005.

Defining "information" under the RTI Act, the Commission said the information for the purpose of the Act means information available with public authority and not the information which is non-existent or cannot be accessed. An "opinion" or an "advice", if it is a part of the record, is "information" but one cannot seek from an IO either an "opinion" or an "advice" as it would be seeking a decision which he may not be competent or authorised to take. ◆ ◆

TRANSPARENCY STUDIES

The Right to Information Act 2005 represents a historic breakthrough in recognising the citizen's democratic rights to monitor measures affecting the public good. Following adoption of the Act by the Parliament of India, the Centre for Media Studies (CMS) set up a Transparency Studies wing to document, examine and publicise the interrelation between governance and society in all its aspects. It facilitates dissemination of relevant material, confers with experts and field workers and networks with the media to promote implementation and awareness.

The functions of Transparency Studies include:

- Publishing and distribution by electronic mail of *Transparency Review*, a journal designed to publicise news, articles and documentation concerning developments in Right to Information and the overall interface between governance and society. Priority is given to right to education, especially of children; right to work; right to justice and associated human and social rights, especially at the grassroots.
- Operating Transparency Features to disseminate articles and information on the above.
- Linking with civil society groups to further common objectives like exposing corruption, monitoring elections, improving civic services.
- Arranging discussions on emerging issues and problems between specialists and mediapersons.

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