

# TRANSPARENCY REVIEW

July-August 2006

Journal of the Transparency Studies Unit, Centre for Media Studies (CMS)

---

## SABOTAGING SUCCESS

*This issue spotlights a most eventful month for the right to information movement. It records the major successes scored but also how they are now sought to be sabotaged by those scared of exposure. The Right to Information Act reached into the highest levels of government when the Central Information Commission overrode objections to insist on the disclosure of Cabinet papers concerning the appointment of a senior official. In July, too, volunteer groups throughout the country collaborated in a highly successful two-week campaign to advise citizens on procedures to secure information with media support.*

*The rapid progress of the movement seems to have induced second thoughts in our Ministers and the faceless bureaucrats behind them. The Union Cabinet has decided to amend the Act to exempt notings on selected files from disclosure, thus shielding bureaucrats from accountability.*

## CONTENTS

### THE ATTEMPTED SABOTAGE

*Aruna Roy: Crucial importance of file notings*  
*NCPRI: Move will promote corruption*  
*Madhav Godbole: Appeal to the President*

### CIC ON DISCLOSURE OF CABINET PAPERS

*Transparency Team: Govt in the dock in recent decisions*

### ARC REPORT AND RIGHT TO INFORMATION

*Shekhar Singh: Some serious flaws*

### RTI REACHES OUT

*N. Bhaskara Rao: An overview; the PIO hurdle*  
*Transparency Team: Pathbreaking campaign*  
*Usha Rai: Scam in Anganwadis*

### TRACKING CORRUPTION

# A CMS Initiative

Transparency Review, an initiative of the Centre for Media Studies (CMS), has been engaged in taking steps to make good governance a serious concern and amongst other issues has regularly published data on corruption in India. With the implementation of the Right To Information Act (RTI), good governance is no longer a distant dream and its potential, if unleashed at all levels of administration and in all public services, would propel our efforts to achieve newer heights for the establishment of a more equitable society, a truly welfare state and for more productive enterprises.

It is with this intention that the Transparency Study Unit has been initiated by CMS to periodically track and review the implementation of the RTI Act in various parts of the country, using objective research methodologies and sensitizing civil society. We seek support of many other concerned activists, academicians and administrators in our endeavour.

## CMS Transparency Study Unit

To promote awareness and implementation of the Act, the Centre for Media Studies has set up a Transparency Study Unit. It will examine developments in RTI and associated social objectives, facilitate dissemination of relevant information and serve as a link between Media, RTI groups and activists.

*Transparency Review is a publication in print form and in electronic transmission. Please contact us at: [transparency@cmsindia.org](mailto:transparency@cmsindia.org) [info@cmsindia.org](mailto:info@cmsindia.org) website:[www.cmsindia.org](http://www.cmsindia.org)  
( For Private Circulation Only)*

Editor : Ajit Bhattacharjea.

### NATIONAL CONVENTION ON RIGHT TO INFORMATION

President Dr. APJ Abdul Kalam will inaugurate a national convention on the Right to Information on October 13, 2006 on the eve of the first anniversary of the Right to Information Act coming into force.

**The Prime Minister Dr. Manmohan Singh will address the concluding session on October 15. Civil society groups and heads of concerned departments will participate in the three day Convention at Vigyan Bhawan, New Delhi**

# Right to Information Sabotaged

Aruna Roy and Nikhil Dey

*Within six months of enacting one of the most progressive RTI laws in the world, the Indian Government has decided to strike at its root, by barring the disclosure of 'file notings.' The paper trail will be kept invisible.*

**T**HE 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)]."

### **Integral Part**

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. 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.

**Courtesy The Hindu**

# A Retrograde Step

Sailesh Gandhi

*(Convenor, National Campaign for People's Right To Information)*

There is news that the Cabinet has decided to amend the Right To Information Act to exclude file notings from the Act. NCPRI categorically states that this is a completely retrograde step which seeks to curtail the Citizen's fundamental right in an unacceptable manner. If file notings are exempted, it is a sure method of obfuscating the existence of arbitrariness in the decision making process, which enables fixing accountability on specific officers. It will encourage corrupt and arbitrary practices and be a sure way to kill the spirit of the Act. The Ministers have been ill-advised in going back on the promise to Indian Citizens of transparency and accountability. NCPRI and all other Civil Society organizations will strongly oppose this move which encourages opacity in the decision-making process, since this would encourage corrupt practices. We recommend that the Government should stop this move to dilute the Act. Citizens from all strata of the Nation are using to it with great hope and faith to monitor and curb arbitrary and corrupt practices in the Governance.

The preamble to the Act had recognised, *'AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed; AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information; AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;'*

Thus it accepts that after careful thought by the Parliament and Citizens, a careful harmonizing has been done of the conflicting interests. It was after a lot of deliberations that this Act was framed, which codifies the Citizen's fundamental right under Article 19 (1). An elaborate process was undertaken from August 2004 to December 2004, when the bill was first tabled. Since various stakeholders felt that there were some important deficiencies, a Parliamentary Committee was set up in January 2005, which went into an elaborate consultative process with the Government functionaries and Citizens groups. After a meticulous and detailed exercise, the final draft was prepared by the Government and tabled before the Parliament.

After due debate, this bill was passed by both houses of Parliament and assent given to it by the President. Making changes in this law, seems to make a mockery of the entire democratic law-making process, the Government's promise and actions, and the Parliamentary Committee and Citizens who contributed to this law.

NCPRI suggests that the Government desist from attacking this fundamental right of Citizens. Citizens believe this Act will take the Nation towards a true participative Swaraj, and the Government should focus on how to strengthen the implementation of the Act. This move coming in the wake of an all-India, Antibribery Citizen's Campaign using Right To Information, would send a signal to them, that this is a move to curb their rights, since it threatens certain undesirable practices.

# Protest to the President

**Madhav Godbole**

*(Former Home Secretary)*

I was shocked to read in the newspaper that the Central Cabinet had decided to amend the Right to Information (RTI) Act to deny information to people about the notings on files. It must be underlined that the right to information is a fundamental right and all that the Act was meant to do was to operationalise this right. As you must be aware, the political elite as also the bureaucracy have never been sympathetic to this enactment. Series of Bills prepared by GOI before the present law was enacted brought this out fully. When I was invited by the joint select committee of Parliament to appear before it and comment on one such Bill a few years ago, I had strongly pleaded that the people must have a right to see the notings on the file, including the notes put up to the committee of secretaries and the cabinet and its committees, after a decision is taken on a case. The only exceptions could be matters pertaining to national security, defence, external relations etc. but they must be much more narrowly defined than is the case at present. The current practice of indiscriminately marking files as confidential, secret and top secret must be given up at the earliest. I have urged this point repeatedly in my writings on the related issues in the past.

The decision of GOI to amend the RTI Act is highly retrograde and would totally defeat the very purpose of the Act. In fact, making the notings on the file open to people can be the single most effective check on the rampant corruption both at the administrative and political levels. It can also strengthen the hands of officers of honesty and integrity. It is only by ensuring transparency and accountability that governance can be improved. Demystification of the working of the government is the best way to empower a common person. Needless to say, we should learn from commendable practices in other democracies and not use some of their out-dated policies to shield government functioning at home from public scrutiny.

In the light of the above, I would urge you to bring moral pressure on the government to review this decision. Your intervention would go a long way in strengthening democratic governance in the country. You have been a tower of strength in such endeavours in the past and hence this request.

*(Letter to the President, Dr. A.P.J. Abdul Kalam)*

## **Hazare Returns Award**

One of the crusaders of the Right to Information and a well-known social activist, Anna Hazare has strongly protested against the amendments suggested by the Union Cabinet in the Right to Information Act and has said that he would return the Padma Bhushan awarded to him by the President in August last. He also plans to start a national movement to protest against the Government's decision to amend the Act. He plans to start the protest on August 9

# Show Cabinet Papers, Says CIC

## Transparency Team

As 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)

## OFFICIALS FACE ACTION

The Central Information Commission has asked the Principal Information Officer of the Union Ministry of Scientific and Industrial Research why disciplinary action should not be taken against them for not giving information to a Delhi-based private encryption and information consultant as directed by it. They were also asked to explain why a penalty of Rs 250 per day from the date the Commission asked them to furnish the information, subject to a maximum of Rs 25,000, should not be levied on them.



The appellant had asked for information about grants to private individuals and companies for prototype development and about the efforts made to propagate the Techno-Entrepreneur Promotion Programme across the country in the past seven years. Neither the PIO nor the Appellate Authority responded to his application for more than two months. Then he appealed to the CIC; it directed the concerned officials to place on the website the information asked for and also give the information to the applicant.

When there was no response from the officials to the Commission's directive, the applicant again approached the CIC which came down heavily on the officials for not giving the information within the specified time without giving any reason.

## **CVC PULLED UP**

In another case the Central Information Commission upbraided the Central Vigilance Commission for its "lackadaisical attitude in implementing the Right to Information Act." It also issued a show-cause notice to the CVC Director to explain why a penalty should not be imposed on him for failing to comply with the Act.

An appeal was made to the CVC by Mr Vinod Kishor complaining that details regarding the Central Vigilance Commission inquiry against him following disciplinary proceedings initiated by his employer, NABARD, Patna, had not been supplied to him. His application to the CVC had been disposed of by the Director of CVC saying that the concerned file was not readily available and promising further action shortly. Since there was no further communication he made his first appeal to the CPIO who informed him that copies of the correspondence exchanged between the CVC and the NABARD showed that some of the documents had been marked secret" and hence the Central Vigilance Officer NABARD, had been asked to ascertain if the information came under the exempted category. When the information sought by him had not been given either by the PIO or the Appellate Authority even two months after his first application he appealed to the CIC. Saying that the CPIO had adopted a circuitous approach to deal with the matter and the applicant's petition had not been disposed off even after four months, the CIC and even the Commission's letter had not been answered. The CIC pulled up the CVC for not fulfilling its mandatory obligations under the RTI to ensure transparency in its functioning.

Directing that the required information asked for by the applicant be given within a fortnight, the Commission held the CPIO (Director, CVC) to be guilty of violating the prescribed limit of thirty days to reply to a petition on one pretext or another, and directed him to show cause why the prescribed penalty should not be imposed on him.

## **PRESIDENT-PM LETTERS**

The Central Vigilance Commission has reserved its decision on the issue of whether or not to disclose of letters exchanged between the then President and the Prime Minister on the question of the Gujarat riots of 2002. The reference to the CVC was made after an applicant was denied this information by the PMO

# Flaws In ARC Report

Shekhar Singh

The first report of the (Second) Administrative Reforms Commission (ARC), on the Right to Information, was recently submitted to the government. A close look at the report reveals that though there are many supportive recommendations, at least three of the recommendations threaten to undo the recently enacted right to information (RTI) ACT.

The first of these is the recommendation that a public information officer (PIO) should be allowed to “*refuse a request for information if the request is manifestly frivolous or vexatious*”. The ARC states that “certain instances” have been brought to their notice of requests for information that are mala fide and “intimidate”, “harass” and even “humiliate” officials. It adds that such requests threaten to “overwhelm the system”. However, the ARC neither gives any specific examples, nor does it go on to explain how the truth, which is what RTI Acts grant access to, can be used for mala fide purposes (whatever that might mean), or for intimidating, harassing or humiliating an officer.

The ARC lays down no criteria for determining what is “manifestly” frivolous and/or vexatious, perhaps because these terms are essentially subjective. Consider, that to an officer who deals daily with millions of rupees, a dispute over ten rupees of wages might appear to be manifestly “frivolous”, but to a poor, daily-wage, labourer these ten rupees could represent two kilos of wheat and the difference between her child living or dying. The same is true of vexatious. In fact, any request questioning the judgment, the efficiency, the impartiality, the commitment or the integrity of a bureaucrat could be vexatious – or annoying - to the bureaucrat or the bureaucracy. But the right to ask ‘vexatious’ questions is the essence of the RTI Act and flows from the fundamental right of the public to question the public servant. To deny that would be to deny the very right itself.

The real danger of this recommendation is that, if accepted, it would very likely lead to most applications being routinely rejected as frivolous or vexatious. The recommended automatic appeal to the information commission is no solution, for it would just add to the growing backlog of appeals pending before these commissions. Also, in the absence of penalties, there would be little incentive for PIOs to be responsible. Besides, even if information commissions decentralise, as recommended by the ARC, the poor and the illiterate would find it difficult to attend hearings or send written submissions, and without their effective testimony, denial of information would be unfair.

The ARC also recommends that “*information can be denied if the work involved in processing the request would substantially and unreasonably divert the resources of the public body.*” As justification, ARC states that “there may be cases where the efforts in **compiling** information may not be commensurate with the results achieved”.

Unfortunately, the ARC seems to ignore the fact that nowhere in the RTI Act is there any obligation on a public authority to compile information, or collect primary information. The obligation is simply to provide information that is collected, or should have been collected. In fact, section 7(9) of the RTI Act, further clarifies that *“An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority ...”*.

As such, this recommendation is unnecessary, unreasonable and could also lead to subjective and wholesale rejection of requests, seriously blocking access to information.

## **Exclusion of Armed Forces**

The ARC surprisingly recommends that armed forces should be excluded from the purview of the RTI act, because most of their functioning is already exempt on security grounds. However, this is no reason why the rest of their functioning should not be brought under public scrutiny. Security agencies have many employees; they make decisions which impact the lives of people, affect the environment, spend public money, award contracts and make purchases. Why should citizens be denied access to information about these matters? And if it is unfair that security organisations are exempt, then withdraw exemptions from all security and intelligence organisations.

Perhaps the ARC has fallen prey to a common misconception that secrecy enhances national security. In actual fact, it is under the cloak of secrecy that inefficiency, patronage and treachery flourish. The exemptions already provided in the RTI Act are more than adequate to ensure that the security of India is not compromised. Besides, intelligence and security agencies would work far more effectively if they worked under the watchful eye of the public.

Perhaps these faulty recommendations might never have been made if the ARC had functioned in a participatory and consultative manner. Interestingly, the recommendations of the one consultation that the ARC reportedly organised, at Bhopal in December 2005, have been totally ignored. The Bhopal consultation recommended that the RTI Act should not be amended, and exemptions do not need rationalisation. Nevertheless, the ARC has recommended amendments to the RTI act and recommended “rationalisation” of exemptions. Unfortunately, the ARC did not see the need to discuss their draft recommendations with the public before they were finalised and submitted to the government. Yet, in the introduction to their report the ARC state that good governance has four elements – transparency, accountability, predictability and participation!

## **Salient Features**

### **Transparency Team**

The Administrative Reforms Commission’s report has some welcome recommendations, as for instance, re-opening the Official Secrets Act 1923 or replacing the oath of secrecy of Ministers assuming office by an oath of transparency along with an oath of office. The existing legal provision is a cat-call one which converts practically all issues of governance into a confidential matter, says the report, and wants this legacy of the British to be replaced by a National Security Act.

Similarly, it says the spirit of the existing Civil Services (Conduct) Rules is to withhold information and hence needs to be recast. It seeks to discourage the tendency to classify even unwarranted matters as classified by amending the Manual of Departmental Security Instructions to limit classification only to such information which would qualify for exemption under the Right to Information Act.

One other recommendation wants the present pre-ponderance of civil service officers manning Information Officers' posts to be changed to include a larger proportion of members of non civil service background. It suggests amendment to Section 12 of the RTI to make the selection of chairman of the Central Commission to the triumvirate of the Prime Minister, the leader of the Opposition and the Chief Justice of India with a corresponding selection process in the States.

Some other suggestions have come in for criticism. The report says: The highlight of the Act is that the information seeker shall not be required to give any reason for requesting the information or any other personal details..." This salutary provision is important to ensure that there is no subjective evaluation of the request, or denial on specious grounds. However, certain instances have been brought to the notice of the Commission members on which the requests were patently frivolous or exatilus (or malafide). There are also cases in which public servants under a cloud and facing grave disciplinary charges have repeatedly attempted to use the Act to intimidate, harass or at times even humiliate seniors with requests that have been vexatious. If safeguards are not provided in such situations, there could be three dangers.

First, such frivolous or vexatious requests may overwhelm the system and defeat the very purpose of the Act. Second, the even tenor of the administration may be paralysed, seriously undermining delivery of services. Third, if public servants facing serious charges successfully resort to such tactics directly or through proxies it may lead to breakdown of discipline, insubordination and disharmony in public institutions. The Commission, therefore, feels that adequate safeguards should be provided against vexatious and malicious requests, even as no fetters imposed on citizens' seeking information accordance with the letter and spirit of section 6(2).

The ARC further states that there may be cases where the efforts in compiling information may not be commensurate with the results achieved. Even in cases of furnishing information in Parliament there is a stipulation that a question which clearly relates to day-to-day administration and asks for collection of facts pertaining to the Ministries entailing prolonged labour and time not commensurate with results achieved is ordinarily disallowed." Suggesting similar limitations in the Act, the Commission wants precautions taken to ensure genuine requests are not branded as "frivolous" or "vexatious".

# A Campaign Overview

***Has the Right to Information Act made any impact on any aspect of governance? Has it brought about any change in the citizens' lives? What has been the role of State Information Commissions, which had been specially created with heavy responsibilities and high expectations?***

**Dr. N. Bhaskara Rao**

**T**he Centre for Media Studies in New Delhi set out to find the answers to these and related questions. Sadly enough, the ground realities were far below expectations.

Under Section 26 of the Act the Government is expected to “organize educational programmes to advance understanding often public in particular the disadvantaged communities on how to exercise the rights contemplated under the Act.” In most States there is no evidence of any such activity. The State Information Commission, similarly, is expected to see that the Act works to the advantage of the citizens even without their having to apply for information. In Andhra Pradesh, for example, hardly any department has publicized its activities, specially its budget and expenditure, a requirement under the Act.

The fate of the Act and ground realities could be better understood at the level of the PIOs in a State. I had an opportunity of meeting a cross-section of PIOs across Andhra Pradesh. Of some 110 PIOs I had met, 80 per cent of them did not have any proper nameplate outside their offices. What was worse, only 10 per cent of them had read the Act. Even among students of Andhra University, including the Law Faculty, barely five people had read the Act.

Most of the PIOs said that they were neither given any orientation about the Act, nor made aware of their responsibilities. All of them were designated as PIOs as if it was an additional responsibility and a temporary assignment. They had no infrastructure (not even a photocopier). Over eighty per cent of them had not yet received any application nor took any initiative on their own under the Act.

One PIO refused to give the information sought by an applicant saying that “this was not the concern “ of the applicant. Another asked the applicant to pay a fee of Rs.35 with his application when the Act provides for a charge of just Rs10. None of the PIOs had received any reference material from anyone about the RTI Act, not even the rules of the State Government for implementing the Act. Even in the few cases where applications were received, the tendency was to wait for 30 days before giving the information, even though the information sought was readily available. The situation in Andhra Pradesh is no different from what prevails in other States, which is a sad commentary on the implementation of the Act. Obviously a lot more needs to be done by not only the Governments in the States but also civil society groups to make the RTI a success.

## Steps For Good Governance

The RTI Act of 2005 implies ushering in a “third wave” of democracy in the country. But the picture that emerges after the first nine months of the Act is not so optimistic in many States. This Act gives a unique opportunity and we should do everything possible to make it work and succeed. For this, seven steps are essential.

The first and foremost is appointment of PIOs and making them truly responsible by acquainting them with the provisions provided in the Act. A directory of PIOs and appellate authorities in the districts and at the State level should be made easily available.

The second is that maintenance of records and their updating, retrieval and access at all levels should be addressed as a national task, as a mission. With the available Indian know-how on information technology it should be possible to make online access speedily available.

The third is that suo moto obligatory disclosures by government departments, public authorities and services at various levels at least once a year should be a routine. It should be easily available and a visible exercise so that citizens need not apply every time even for routine information.

The fourth is that Information Commissions, specially created under the Act for ensuring its implementation, should be made to operate more pro-actively and demonstrate their powers. For instance, they can follow up media reports in some cases, as is being done by the Human Rights Commission and the Supreme Court.

The fifth is that civil society groups need to keep sharp vigil on the working of the Act and continue to sensitize their fellow citizens as well as other stakeholders. They need to be involved in the working of the Information Commission.

The sixth is that news media should be more concerned and devote space and time about the working of the Act and the its implications. In fact, for news media the Right to Information movement is yet another opportunity to demonstrate their larger role as they did during the Freedom Movement. They have everything to gain from this Act; so also the journalists, individually.

The seventh is that independent researchers and academicians should monitor, appraise and evaluate from time to time, the role and impact of the Act on corruption, equity and governance issues. Who is taking advantage of the provisions of the Act is something we need to know so that correctives in its implementation could be prompt.

There is something to gain from the RTI for everyone, including the PIOs, senior Government functionaries, citizens, civil society groups etc in a way that democracy in India takes deeper roots and development endeavours become people-centric.

## Lessons From Andhra

“I feel like a 35-year-old” is how a 80-year-old freedom fighter,. Sridhaer described his feelings on getting information from the concerned department about development works in his village for the last few years. His friend had tried to get this information since March but the panchayat secretary concerned was pressurized by the elected Sarpanch and the Mandal Officer not to give the information as “this was another Act like many before.” Sridhar was so excited on getting the information that he rang up Hyderabad from Vijayawada to convey the news.

He had filed an application in Telegu for getting the information but got no response. His next appeal to the State Information Commission resulted in a routine reply in English. At this stage the CMS, which had launched an RTI campaign, entered the picture and took up his case with successful results. The campaign helped sensitize not only the common people but also government functionaries including senior officials to take the initiative and view the Act as an opportunity to serve the people better.

The fortnight’s campaign in three districts of Hyderabad, Vijayawada and Vishakhapatnam, was not limited to individual cases involving corruption; it was designed to inform citizens and officials about the relevance of the RTI Act in providing good governance, the obligations of departments and the role of Information Commissions under the Act. Also, the campaign was not confined to one camp for filing applications but involved a whole range of activities. These included group discussions, interviews with various news media and extending the campaign to such places as the Press Club, the Central Jail, in front of civil courts,; the University and main market places.

At each place, local civil society groups were involved and were in the forefront organizing RTI camps. Senior citizens’ associations, welfare organizations, journalists’ association, medical association and local Lok Satta newspaper offices formed part of the campaign. It was heartening to see these groups promising to carry on the campaign and form a statewide council to continue the work of creating awareness and encouraging the people to use the Act.

More than 3,500 people attended the camps in the three districts but hardly five per cent of them filed one or more applications under the Act. Attendance by the downtrodden and women was noticeably poor. The response was not uniform in the three districts. What the camps achieved was to generate much-needed interest in the RTI Act and inform all concerned about the potential of the legislation and the procedures to be followed to make full use of the Act. The real impact of the camps would perhaps come later as the momentum gathers. An indication of this was the enthusiasm, which spread among many in Vijayawada to use the Act, following the successful efforts of old Sridhar, with the help of the CMS campaign, to get the information he wanted.. Hopefully, such instances would spread fast in the months to come so that the real power of the RTI is realized.

*Dr. N. Bhaskara Rao is Chairman of Centre for Media Studies (CMS)*

# Pathbreaking Campaign

## Transparency Team

The popular response to the Right To Information Campaign throughout the country organised by Parivartan and other volunteer groups demonstrated the widespread need for administrative transparency. As many as 42,539 men and women approached the network of camps during the 15-day campaign in July. Many were old and infirm, clutching at a hope to secure dues denied to them by uncaring and corrupt officials. After advice to them by the student volunteers, 18,380 filed applications for information. In Delhi alone 3187 visited the various camps of whom 2500 filed RTI applications. Close to 23,465 people had phoned-in to know more about the Act.

According to the Right to Information Act, an applicant should expect to get a reply within 30 days. Prompt response in a few cases encouraged others, often from officials anxious to avoid inquiry. Many citizens waiting long for ration cards and passports secured them virtually on the spot. The response to the applications from Manav Mehra in Delhi and Prem in Rai Bareilly was fast.

Mehra's mother was due for a bypass surgery. The GB Pant Hospital in Delhi failed to provide his mother with a bed even after completion of all the formalities. Mehra approached the hospital on July 2, seeking an explanation under section 7(1)- 'life and liberty', of the RTI Act. The hospital, on receiving the application, promptly admitted his mother and the surgery was successfully carried out.

Then there was the case of Prem from Rai Barielly. He had borrowed Rs 6000 on his Kisan Credit Card from the Bank of Baroda. Even when the entire loan amount had been repaid the bank kept issuing notices for an outstanding loan amount of Rs 1330. This continued for five years and all efforts to prove to the bank that the loan had been repaid, failed. Prem, was guided over the phone on how to frame and file an RTI application. On July 13, he approached the bank with his RTI application. The effect was that, the bank manager issued a notification, there and then, that no outstanding amount was due and requested him not to file the application.

Others I saw at the camp in the Indira Gandhi stadium in New Delhi typified the plight of many who see the Right To Information Act as their only source of hope. Raj Bala, a widow from a village in Madanpur, New Delhi, is a case in point. She had petitioned the Government of Delhi for the last eight years for a job guaranteed to her at the time of her husband's death. Her husband, a Delhi Electricity Supply Undertaking (DESU) employee, had died in service. With no breadwinner in the family she was left to raise seven daughters on her own. Raj Bala's only hope was the job she was promised. But eight years since, nothing has come her way except official apathy. She said, the Right To Information was her last resort in her fight to secure her right.

Jai Prakash Dubey, a visually handicapped teacher from Mayur Vihar Phase-II, had been made to run from pillar to post by the account's department of J.P.M Senior Secondary School for the Blind, where Dubey worked as a teacher for five years before moving to Sarvodaya Bal Vidyalaya, Trilokpuri. For the last one year or so Dubey had been requesting the accounts officials to issue his pensionary pro-rata amount certificate and add the five years he spent teaching at J.P.M Senior Secondary School to his service record to ensure proper pensionary



entitlements. It had not been done till date. Dubey finally decided to seek information through the RTI Act and filed an application to that effect. These are just two of the hundreds of grievances that flooded the RTI camp at IG stadium each day.

The 200-odd volunteers in Delhi drawn from colleges and universities braved the hot and humid Delhi-summer for 15 straight days to help the hundreds of visitors at the camps. With professional determination, each volunteer dealt with the issues raised, at times when the applicants were very irritable. Yet the sight of college students advising harried and desperate elders was inspiring. The campaign was intended to educate people about their right to seek information from public agencies using the provisions of the Right To Information Act, especially when work was unduly delayed intentionally or otherwise.

The fifteen-day nation wide campaign was organized by 20 volunteer organisations from Delhi led by Parivartan- working in the area of transparency in governance. The ground work for the campaign was a one-day workshop for representatives of volunteer organisations from across the country, who were invited to Delhi. The beauty of the campaign, according to Mr. Arvind Kejriwal, of Parivartan , was that even in the absence of a central command structure, it was a great success involving 700 volunteer and civil society organisations covering 55 cities across the country, a sentiment shared by Mr. Manish Sisodia, director, Kabir- another city-based volunteer organisation that was actively involved with the campaign.

The campaign received wide national publicity primarily because of the efforts of NDTV and *Hindustan Times* who gave it extensive coverage in the print as well as the electronic media. NDTV had dedicated time slots for the RTI campaign, while The Hindustan Times, carried daily updates and news items. Publicity is oxygen to a campaign of this nature. The extensive print and electronic media coverage was a major factor for the success that the campaign had.

The campaign was a major success not only in Delhi but also throughout the country. The response has been so positive that the organizers have now started contemplating the next phase of the campaign. Uttar Pradesh attracted the largest number of visitors during the 15-day campaign. In many places the duration of the campaign was increased beyond the stipulated 15 days. Some of these cities were Gorakhpur, Faizabad, Lucknow, Varanasi, Muradabad, Mau and Hardoi. There are now plans to extend the camps to the Block and Tehsil levels.

The impact of the Right To Information Act was instantaneous as news of success started trickling in even before the campaign ended. Apart from the scores of applications regarding passport and ration card delays, a few instances of critical action being elicited from Government agencies, came to light.

Stories of people using the Act and benefiting from it have come in from all over the country, from Lumding and Shillong in the North East to Chitrakoot in Uttar Pradesh. Hindustan Times and NDTV have highlighted many of such stories from far-away corners of the country, during the campaign period.

# Television's Initiative

## Transparency Team

**A** major factor that contributed to the success of the Right To Information Campaign was the extensive print and especially electronic media coverage the campaign received. NDTV helped in spreading awareness about the Act, provide publicity to the RTI campaign and break related stories not only from the cities but from smaller towns as well. The afternoon slot was selected for airing the RTI coverage to target women, particularly housewives. The air-time was gradually increased as the campaign progressed. It aired a number of stories highlighting the success of the Act. Instances where people were able to obtain long pending information and elicit action from public agencies.

One such story aired was that of Naval Kishore from New Delhi. In 2005, he had applied to the Mahanagar Telephone Nigam Limited (MTNL), for the allotment of a PCO. Subsequently he was informed that due to technical non feasibility the PCO could not be allotted in the area specified by him. MTNL even failed to return the caution money he had deposited. He visited the RTI camp on July 1 and filed an RTI application on July 3 seeking information. He was then informed that his affidavit had been misplaced. MTNL, got another affidavit made at its own cost and refunded the caution money.

Another story aired by the channel was from Katni in Madhya Pradesh, where the residents were upset with a hotel in the area that burnt coal in its kitchen polluting the air and raising health concerns for the residents. Fed up, one Mr. Nayan Raj Aggarwal, a resident, complained to the Pollution Control Board on June 22, 2006. On receiving no favourable response from the Board, he decided to seek assistance of the RTI Act to get information from the agency. He approached the Director of the Pollution Control Board with the RTI application on July 3. The Director requested for a grace period of 3 days. An inquiry was ordered into the matter, the report of which was submitted by the evening, the very same day. The next day the Director issued a notice against the hotel.

A three-member core team coordinated the entire coverage from Delhi, with ten roaming reporters, to cover events throughout the country. Public response received by both the Hindi and the English channels increased substantially as the coverage progressed. Initially the magnitude of response was under-estimated and arrangements made to handle incoming queries had proved to be inadequate. The success of the television campaign proved that people-centric campaigns can bring popularity to news channels. As a spin off benefit, the channel's viewership in smaller towns increased and the coverage brought it closer to the people of these regions. NDTV has continued its support for Right To Information Act .

# Anganwadi Scam

**Usha Rai**

**N**okha in Bikaner District is a non-descript little town with a cavalcade of camels, women in bright, swirling Rajasthani ghagras, petty farmers and traders. But a small movement on right to information is transforming the lives of people and making Nokha a 'happening place' in the sand dunes.

It all began with the setting up of an information centre (soochna kendra) , bang in the centre of government offices, to act as a lynch pin between the babudom and the farmers and villagers of Nokha block. Looking for information on various government schemes and projects, the villagers quickly got conscious of their rights. The meagre stock of grains and sugar in the public distribution system, locked anganwadies and lack of poor facilities in government schools were investigated and everywhere a scandal was unearthed.

Jagrook Nagrik Manch and Jagrook Yuva Manch, each with an active membership of 450 and 1000 respectively, have been the eyes and ears of the community and spearheading the right to information movement in Nokha Block, says Chetan Ram of Urmul Jyoti, an NGO active in rural development and social work in Rajasthan for 17 years. Since Urmul seeks to ensure transparency in development work, Chetan Ram has been advocating the use of the Right to Information Act.

The Jagrook union and with the support of the local MLA, the village pradhan and others complained about the movement to the former chief minister Ashok Gehlot. The CM boked into the charges and gave a clean chit to the Jagrook Nagrik Manch.

Under the right to information campaign, the JNM has scrutinised the working of 20 government departments. When people in the block have a problem, whether it is not getting rations or the right wage for work done, they come to the soochna kendra and pour our their endless tale of woes. The young activists organise meetings with the officers concerned and they in turn assure action against those taking bribes and harassing the common man. "Follow up" is a vital component of the JNM's activity. There is no resting on oars till the job is accomplished.

So far JNM and JYM have ensured redistribution of Rs 15 lakhs taken as bribes by government functionaries. Upto Rs 2.5 lakhs were collected as bribes by the Jodhpur Vidyut Vitaran Nigam Ltd for giving electricity connection to villagers or for moving an electric pole closer to their house or field. In Jhadeli village 80 farmers had to pay Rs 64,000 as a bribe for getting a big electricity transformer. After the JNM swung into action all this money was returned.

In Himmatsar village, the sarpanch or members of his family had a stranglehold over the public distribution system for close to 50 years. When members of the JNM wanted a photo copy of the distribution register, the sarpanch offered to give back to the villagers all the money he had made by denying them rations and selling the food grains to private traders. He had to give 221 villagers Rs3.8 lakhs, the amount he had made in 25 months. In addition he had to pay a penalty of Rs 41,000 which went for buying durries and other necessities for schools and other projects in Nokha. For three days, in the presence of the SDM, the money was distributed personally by the PDS owner to every house. In Dawa village, a similar investigation of the PDS led to Rs 1.5 lakh being refunded by the dealer.

The JNM survey of anganwadis in the block threw up some startling anomalies. Of the 208 anganwadis allotted for Nokha, 40 were surveyed. Twenty eight were locked at the time they should have been catering to pregnant women and children; two were just 100 metres apart. Just three of the 40 anganwadis were open and functioning. They had just 10 to 13 children as against the 100 they should be catering to. Several anganwadis existed only on paper.

A survey of the register at Ankhisar village anganwadi showed that the same three women were shown as pregnant for three consecutive years. The food and tonics allotted to the pregnant women had obviously been siphoned off in cash or kind.

Chetan Ram and the young activists of the Jagrook Nagrik Manch and the Jagrook Yuva Manch are now looking at the functioning of schools. School enrolment figures in Rajasthan are faked, says Chetan Ram. Sometimes as much as 60 per cent are false enrolments. But the battle for rights has only just begun. It has a long way to go, says Chetan Ram.

## **BUREAUCRATS' ASSETS**

The State Information Commission of Karnataka, the Appellate Authority under the Act, ruled that assets and liabilities of government servants are in the public domain and can be accessed by anyone under the Right To Information Act. The AA ruled that the assets and liabilities statement of a government official is not a private or confidential document and, as such, may be requisitioned by any interested applicant. Also, ruling on a provision under Section 8 (1) of the RTIA, the AA said that information that can be sought by the state legislature could not be denied to an applicant.

The case in which the AA made its ruling pertains to a plea filed by the convenor of the All India Dalit Forum. The petitioner was appealing against the rejection of his request to the Karnataka Labour Department's Public Information Officer for a copy of the service register extract, giving the details of assets owned by a joint director of the directorate of employment and training. The information asked for covered the period from April 1, 1996, to March 31, 2005.

In the Forum's appeal filed with the appellate authority, it argued that the RTIA clearly stated that information that could not be denied to Parliament or the state legislature should not be denied to any person making a request under the RTIA.

Source: *The Indian Express*

# Tracking Corruption

**Naveen Surapaneni**

**A** corruption study in India ranks the police department as the most corrupt, followed by the judiciary and land administration. Rural financial institutions, comparatively, are the least corrupt.

The Study finds 10 million households pay bribes to avail of one or the other of 11 common public services like electricity, water or rural finance. In terms of numbers 2.1 crores of people had to pay bribes to avail the services of the electricity department. The police department accounted for 80 per cent of corruption-encounters with citizens.

The Study, "Tracking Corruption in India – 2005" (this is the sixth such annual survey), shows that need-based services like judiciary, police, land administration and rural finance have a larger incidence of corruption than basic services like schools, public distribution system and government hospitals.

The corruption mirror, not surprisingly, puts Bihar as the most corrupt among the States, with Kerala figuring at the bottom of the list. After Kerala come Jammu and Kashmir, Madhya Pradesh, Karnataka, Rajasthan, Assam, Jharkhand, Haryana, Tamil Nadu, Delhi, Uttar Pradesh, Orissa, West Bengal, Punjab, Chandigarh, Maharashtra, Andhra Pradesh, Gujarat and Himachal Pradesh.

Usage of public services across the States is not uniform. In States like Himachal Pradesh there is higher usage of Government schools and Government hospitals. In contrast, use of such services in poorer States like Bihar, Madhya Pradesh and Rajasthan is lower – 41 per cent, 54 per cent and 55 per cent, respectively. The reasons for poorer States using less of Government services could be low physical access or lack of manpower and infrastructure as also higher transaction costs due to corruption and negligence.

Another interesting fact that emerges from the study is the wide disparity in respect of availability of certain basic amenities like water and electricity. Only one per cent of the households have access to water supply. Even States like West Bengal and Assam which have abundance of natural water, only five per cent of households enjoy this facility in West Bengal and a mere six per cent in Assam. Quality of service is directly proportional to usage in services like schools and hospitals.

Obviously, the impact of corruption on the poor is more. It has both direct and indirect effect. Directly it increases the cost of public services for the poor, often restricting their access to these services. And indirectly diverting public resources from, social sectors thereby limiting development, growth and poverty reduction. The Study points out that "the poor are more vulnerable both in terms of being easy targets for being subjected to extortion, bribery as well as in terms of being hit by the negative and harsh consequences of corruption on the country's overall development.

Are those better educated less prone to giving bribes than people with lower education? No, says the Survey. Cumbersome procedures and complicated forms requiring documentation propels the well-educated to touts and middlemen.

Centre for Media Studies (CMS) is an independent professional forum engaged in research, policy advocacy, advisory services and programme evaluation. CMS endeavors for accountability, responsiveness and transparency in policy making in public systems and services. CMS, debates and dialogues on important public issues are appreciated nationally.

CMS has emerged as an inter-disciplinary professional body with a wide range of concerns and capability in areas of communication studies, social research, social development, environment, public opinion research, training and performance appraisal. CMS initiatives in regard to regulatory framework, including the media sector, are well known. CMS is well known for its survey methodologies and field research, both qualitative and quantitative, including large scale national surveys.

Over the years, CMS has taken initiatives in evolving a Citizens' Charter, Social Auditing, capacity building, transparency in public utilities, electoral reforms, information equity, good governance and campaign strategies. In addition, CMS focuses on Tracking RTI operations, implementation and implications. CMS Academy is well known for its conferences, seminars, training and orientation programmes for senior functionaries, decision makers and those in voluntary organizations.



### **Centre for Media Studies**

RESEARCH HOUSE, Community Centre, Saket, New Delhi-110 017

Phone: 26864020, 26851660 ; Fax: 011- 26968282

Email: [transparency@cmsindia.org](mailto:transparency@cmsindia.org), [info@cmsindia.org](mailto:info@cmsindia.org)

Website : [www.cmsindia.org](http://www.cmsindia.org)