



Transparency Review

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Transparency in governance can help protect environment

Dinesh C Sharma

The massive cultural event held on the ecologically sensitive floodplains of Yamuna right in the heart of the national capital in violation of green regulations has shocked the nation. The event was held on the floodplain despite the National Green Tribunal (NGT) passing an order in January 2015 prohibiting any temporary or permanent construction on the riverbed. The only official agency that accorded the permission to the organizers to hold the music show was the Delhi Development Authority (DDA) which deals with all matters relating to land in the national capital.

If only DDA was transparent in its working, the ecological disaster could have been avoided. Like all central government agencies, DDA too falls in the ambit of RTI Act and is supposed to make available all information relating to its functioning and activities in public domain. The agency has a dynamic website and offers many citizen services online like leasehold to freehold conversion, payment of fees etc. However, the information given on its website is inadequate and user-unfriendly when it comes to Delhi Master Plan and its implementation. Ideally, DDA should have several micro-websites about its various activities

and functions like land management, Yamuna floodplains and master plan. When the NGT gave its order about Yamuna floodplain last year, DDA should have followed up with steps to implement the same. The agency is supposed to keep an inventory of all existing and ongoing construction activities in the floodplains, along with all judicial orders. This should include details of structures

like Akshardham temple, Millennium bus depot of DTC, DMRC depot and ongoing construction of new Metro lines at various places in the floodplains. DDA should have made it clear on its website all the 'no go' areas as well as activities permitted in the floodplain.

All this information should be part of a dedicated 'Yamuna Portal' which the DDA

should run. People wanting to conduct activities on the floodplain should be able to apply online, and if approved, the approval conditions should be in public domain. If such a system was in place, DDA could have avoided much embarrassment in the green court and would not have been fined. As it was revealed in the court, DDA first refused permission to Art of Living and then within two weeks did a u-turn and gave the permission. The agency could not explain this strange behaviour.



CONTENTS

**Transparency in governance can
protect environment**
Dinesh C Sharma

**Free speech under
attack in India**

**No Need for hard Copies
for Online RTI Appeals Now**

**No Need for hard Copies
for Online RTI Appeals Now**

**CIC suggests proactive
disclosures**

**Indians should be proud of tradition
of tolerance and plurality**
Amartya Sen

**Time to bring
BCCI under RTI**

**Women demand
right to worship**

**How to select information
commissioners**

**New Aadhrar Bill raises fresh
questions on Privacy**

**Every coop society not public
authority under RTI**

**Ghayal Once Again :
RTI on silver screen**

**Ministers are public
authorities under RTI**

**Digital divide is real
and thriving**

MEDIA REVIEW

**No to transparency in judicial
appointments**

**New rules for
RTI in UP**

**Whistleblowers face harassment
for exposing graft**

Form IV

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The only defence of the agency was that it thought the event was just a ‘recreational activity’ (which was to be attended by 35 lakh people, according to the organizers!). If DDA had followed all transparency norms with regard to the Yamuna floodplain and permissions for activities it was granting, other agencies like the Delhi government, the Indian army, Ministry of Culture would have thought twice before associating themselves with the event.

Both the organizers and the court have blamed petitioner, Manoj Misra, for his ‘last minute’ petition. This is ironic because DDA and AOL kept the details of the

event under wraps. The scale of the event came to be known only when construction of the gigantic stage began. Misra first wrote to AOL and Lt Governor who is Chairman of DDA about how the event would be violation of January 2015 order of NGT.

When he did not get any response from them, he approached the NGT. It is the culture of secrecy that is to be blamed for so-called delay in filing the petition and not the petitioner himself. “When we went there on February 8, there was no construction on the ground. Only the ground had been leveled but there was no structure there. We had shown NGT photographs and asked them to stop it. They just kept dragging it and only gave the decision when everything had been constructed,” says Misra.

In the end, it is secrecy and lack of transparency that is to blame for the unprecedented destruction of the floodplain. No amount of monetary compensation can restore the floodplain.

It is not just DDA which is being opaque about Yamuna, but it is happening with several institutions and agencies across the country. Important documents like minutes of Forest Advisory Committee, Environment Impact Assessment reports of projects and Expert Appraisal Committee for River Valley Projects are all kept secret. When they are made available in public domain, either

the project would have already started or crucial information in the form of annexure and notes is held back. This results in avoidable litigation.

For instance, the Bangalore-based Environment Support Group had to knock the doors of NGT and the Central Information Commission to seek basic information about nuclear-military-industrial complex being developed in Amrit Mahal Kaval

grasslands in Karnataka. NGT directed the Ministry of Environment and Forests and the Karnataka Government to allow the projects only if they were in accordance with law and on the basis of “verifiable and measurable” conditions

that would be open to public review. But no information was provided. RTI applications filed were not replied to, leading eventually to appeals before CIC.

The functioning of the Genetic Engineering Appraisal Committee, which deals with approvals for genetically modified crops, too has come under severe criticism for hiding information about crops approved and biosafety data. The recent heavy water leak in Kakrapar nuclear power plant in Gujarat also raises the issue of lack of transparency. The first sketchy press release about the leak came from the Atomic Energy Regulatory Board. The Nuclear Power Corporation of India Limited, which operates the plant, and the Department of Atomic Energy, which funds all nuclear development in India, remained silent. The Kakrapar plant director issued a press release containing just two sentences.

While addressing the RTI convention last year, the Prime Minister had claimed that the government is working in a transparent manner, reducing the need for RTI as well as litigation. Various government departments have been asked to be proactive in releasing in public domain more and more information. Obviously, this is yet to happen. Let DDA begin with a Yamuna portal so that the river can be revived and its ecosystem protected.

Important documents like minutes of meetings are all kept secret, and when they are made public either the project would have already started or crucial information is held back

If DDA had followed transparency norms with regard to Yamuna floodplains and permissions for activities it was granting, it could have prevented damage to the ecosystem

Free speech under attack in India

The year 2015 was an eventful year for free speech in India. There were legal, political and technological developments that set the tone for these issues to be debated all year round. Journalists were at their most vulnerable, with deaths, attacks, threats, sedition and defamation cases against them at an all-time high. The following are excerpts from “Free Speech In India 2015” report released by media portal, thehoot.org.

Politicians and government organizations which led the table for posing a challenge to media freedom during 2015 the year were the Tamil Nadu government; the Ministry of Information and Broadcasting; the Central Board of Film Certification and the Chhattisgarh state government.

In 2015 the chief minister, her ministers, and her government filed a large number of criminal defamation cases against a range of magazines and individuals, prompting the Supreme Court to take note by the year end. The apex court said that the bulk of defamation cases against political leaders has been filed in Tamil Nadu, and slammed the state government for granting sanction for prosecution in these cases.

In May, the Supreme Court gave omnibus relief to the magazine *Nakkeeran* in connection with a set of 15 criminal defamation proceedings initiated against it by the chief minister, ministers and senior IAS officers in Tamil Nadu. These 15 complaints cited all its 20 reporters as respondents.

In November, criticism of government in action led the City Public Prosecutor M.L.Jegan to file a criminal defamation case against the weekly magazine *Ananda Vikatan* for ‘maligning’ the Tamil Nadu Chief Minister because an article had asked what Jayalalithaa had done so far. In this report’s total count of 48 defamation cases in 2015, the Tamil Nadu government accounts for 11 of them and for

When the Chennai floods brought journalists from other parts of the country to Tamil Nadu, they noticed that questions about fixing blame were neither asked by the press in Tamil Nadu, nor answered by officials at press conferences. It was an indicator of the defamation capital that this city has become.

A Statistical summation free speech violations,2015	
Category	Number of Cases
Deaths	10 - 8 (Journalists) 2 (Writers)
Attacks	30
Arrests	3
Threats	27
Sedition cases	14 - 35 (people charged with sedition)
Defamation	48
Censorship of film	21
Censorship of broadcast media	4
Censorship of print media	3
Censorship of Music	2
Censorship of Cyber Media	13
Hate speech	13

These figures are based on incidents reported in the press and should be treated as conservative estimates. The figures on attacks against journalists collected by the National Crime Records Bureau are not available yet for 2015. The figures for deaths include those cases in which investigations are not complete.

two of the 14 sedition cases filed in the country. In December 2015 the Telegraph reported that the Jayalalithaa government has filed a total of 190 defamation cases during its tenure.

The information and broadcasting ministry has become an image manager for government leaders and a censor rather than a provider of information. In 2015 Sathiyam TV, a Chennai-based Tamil language news and current affairs channel, received a show cause notice alleging that two of their broadcasts had portrayed Narendra Modi in a poor light. In the course of the year, the government issued an advisory to news channels

not to telecast the Nirbhaya documentary and served a legal notice to the BBC for airing the Nirbhaya film ‘India’s Daughter’. It also focused its energies on preventing information leaks to the media and defended its curbs on journalists.

In the course of the year, three channels were issued show cause notices on why they should not face action for Yakub Memon's execution coverage. Among other actions, the ministry banned a documentary on beef and issued a notice to a Gujarat channel for 'sullyng' the image of the prime minister. Following the extended resistance of the students of the Film and Television Institute of India to the appointment of a director at the International Film Festival of India later in the year, the Ministry decided to drop the student film section at the festival. The Central Board of Film Certification got new head, Pahlaj Nihalani, who

remained in the news all year round. The body he headed censored some 21 films in the course of the year, one of which came in for 218 cuts. The CBFC made the most news at the end of the year for shortening the duration of a James Bond kiss. Consequently, on the first day of 2016 the government announced a 6-member panel to review the functioning of the CBFC.

The Chhattisgarh government jailed two journalists and presided over the state harassment of journalists in the Bastar region, which led them to hold a protest in Jagdalpur at the end of the year.

Courtesy: The hoot.org

No Need for hard copies for Online RTI Appeals Now

In a major procedural change, the Central Information Commission has done away with the mandatory provision of sending signed hard copy of appeals through post even though the appellant approached it online

Earlier, it was mandatory for an applicant, filing complaints and appeals online, to send a signed hard copy through post to the CIC, negating the objective of online process. It was only after a hard copy was received that the process of considering the appeal or a complaint was initiated as till then only a provisional number was allotted.

The new Chief Information Commissioner Radha Krishna Mathur has stopped the practice of seeking the hard copy of the appeal and complaint, sources said, adding that the only condition is that the appellant should be present at the time of hearing.

The appellants can now file their complaints and appeals on "http://rti.india.gov.in" and upload supporting documents, the link of which is also given on the site, thus doing away with the need of any hard copy or any paper exchange.

Courtesy: (as reported by PTI and NDTV.com)

CIC suggests proactive disclosures

Bogged down with an unprecedented pendency of over 35,000 cases, Central Information Commission (CIC) is all set to give fresh instructions to ministries and government departments to proactively disclose information on select topics — including examination results, cut-off marks in different categories, foreign trips of ministers, teachers employed on contract basis, pay scales — which constitute a big load on the transparency watchdog. CIC is in the process of identifying common subjects on which it gets most RTI appeals and complaints, according to a report in *Economic Times*.

The chief information commissioner R K Mathur has directed all information commissioners to

identify subjects where RTI applicants have been wrongfully denied information and the CIC has been passing pro-disclosure verdicts. After these subjects are identified, the ministries would be advised to regularly put out information on these common subjects on their websites.

A senior official said, "there are repeated applications on certain subjects like the applicant asking for information about cut-off marks for general category and reserved category in a railways examination. There have been pro-disclosure verdicts given by the CIC regularly. But the Railways refuses to still make this a disclosure norm. Every candidate has to reach till CIC to get his answer sheet and even basic information like cut-off marks."

Indians should be proud of tradition of tolerance and plurality

Amartya Sen

[The following is the text of the Rajendra Mathur Memorial Lecture delivered by Nobel laureate Amartya Sen. The annual lecture was organised by the Editors Guild of India in the national capital on February 12, 2016]

I begin on a self-indulgent note. “How is Amartya?” asked my uncle Shidhu (Jyotirmoy Sengupta) — cousin of my father — in a letter written from Burdwan Jail, on August 22 of 1934, before I was one. He complained about the name “Amartya”, given to me by Rabindranath Tagore, and argued that the great Tagore had “completely lost his mind in his old age” to choose such a “tooth-breaking name” for a tiny child. Jyotirmoy was in jail for his efforts to end the British Raj. He was moved from prison to prison — Dhaka Jail, Alipur Central Jail, Burdwan Jail, Midnapur Central Jail. There were other uncles and cousins of mine who were going through similar experiences in other British Indian prisons.

Jyotirmoy himself came to a sad end, dying of tuberculosis, related to undernourishment in the prisons. As a young boy I was lucky to have a few conversations with him, and felt very inspired by what he said and wrote. He was committed to help remove “the unfreedoms heaped on us by our rulers.”

How happy would Jyotirmoy have been to be in today’s India, with the Raj dead and gone, and with no unfreedoms imposed on us by the colonial masters? But — and here is the rub — have these unfreedoms really ended?

The penal codes legislated by the imperial rulers still govern important parts of our life. Of these, Section 377 of the code, which criminalises gay sex, is perhaps the most talked about, but happily a Constitution bench of the Supreme Court is re-examining it.

It is, however, often overlooked that the putting on a pedestal of the sentiments of any religious

group — often very loosely defined — is another remnant of British law, primarily Section 295(A) of the penal code introduced in 1927. A person can be threatened with jail sentence for hurting the religious sentiments of another, however personal — and however bizarrely delicate — that portrayed sentiment might be.

The Indian Constitution, despite claims to the contrary, does not have any such imposition. In a judgment on March 3, 2014, the Supreme Court in fact gave priority to the fundamental right of the people to express themselves, as enshrined in the

Constitution. The Constitution’s insistence on “public order, decency or morality” is a far cry from what the organised political activists try to impose by hard-hitting kick-boxing, allegedly guided by delicate sentiments. The Constitution does not have anything against anyone eating beef, or storing it in a refrigerator,

even if some cow-venerators are offended by other people’s food habits.

The realm of delicate sentiments seems to extend amazingly far. Murders have occurred on grounds of hurt sentiments from other people’s private eating. Children have been denied the nourishment of eggs in school meals in parts of India for the priority of vegetarian sentiments of powerful groups. And seriously researched works of leading international scholars have been forced to be pulped by scared publishers, threatened to be imprisoned for the offence of allegedly hurting religious sentiments.



Journalists often receive threats — or worse — for violating the imposed norms of vigilante groups. The Indian media has a good record of standing up against intimidation, but freedom of speech and reporting need more social support.

To see in all this the evidence of an “intolerant India” is just as serious a mistake as taking the harassment of people for particular social behaviour to be a constitutional mandate. Most Indians, including most people who are classified as Hindu (including this writer), have no difficulty in accepting variations in food habits among different groups (and even among Hindus). And they are ready to give their children the nourishment of eggs if they so choose (and if they can afford them).

And Hindus have been familiar with, and tolerant of, arguments about religious beliefs for more than 3,000 years (“Who knows then, whence it first came into being? ... Whose eye controls this world in highest heaven, he verily knows it, or perhaps he knows not,” Rigveda, Mandala X, Verse 129). It is a serious insult to Indians — and to Hindus in general — to attribute to them the strange claims of a small but well organised political group, who are ready to jump on others for violations of norms of behaviour that the group wants to propagate, armed with beliefs and sentiments that have to be protected from sunlight.

In fact, quite the contrary. We have been too tolerant even of intolerance. When some people — often members of a minority (in religion or community or scholarship) — are attacked by organised detractors, they need our support. This is not happening adequately right now. And it did not happen adequately earlier as well.

In fact, this phenomenon of intolerance of dissent and of heterodox behaviour did not start with the present government, though it has added substantially to the restrictions already there. M.F. Husain, one of the leading painters of India, was hounded out of his country by relentless persecution led by a small organised group, and he did not get the kind of thundering support that he could have justly expected.

In that ghastly event at least the Indian government was not directly involved (though it certainly could — and should — have done much more to protect him). The government’s complicity was, however, much more direct when India became the first country to ban Salman Rushdie’s Satanic Verses.

So what should we do, as citizens of India who support freedom and liberty? First, we should move away from blaming the Indian Constitution for what it does not say. Second, we should not allow colonial penal codes that impose unfreedoms to remain unchallenged. Third, we should not tolerate the intolerance that undermines our democracy, that impoverishes the lives of many Indians, and that facilitates a culture of impunity of tormentors. Fourth, the courts, particularly the Supreme Court, have good reason to examine comprehensively whether India is not being led seriously astray by the continuation of the rules of the Raj, which we fought so hard to end.

In particular, there is need for judicial scrutiny of the use that organised tormentors make of an imagined entitlement of “not to be offended” (an alleged entitlement that does not seem to exist in this particular form in any other country).

Fifth, if some states, under the influence of sectarian groups want to extend these unfreedoms through local legislation (for example, banning particular food), the courts surely have to examine the compatibility of these legislation with the fundamental rights of people, including the right to speech and to personal liberties.

As Indians, we have reason to be proud of our tradition of tolerance and plurality, but we have to work hard to preserve it. The courts have to do their duty (as they are doing — but more is needed), and we have to do ours (indeed much more is surely needed). Vigilance has been long recognised to be the price of freedom.

The silencing of dissent, and the generating of fear in the minds of people violate the demands of personal liberty, but also make it very much harder to have a dialogue-based democratic society. The problem is not that Indians have turned intolerant.

Time to bring BCCI under RTI

[The Supreme Court-appointed Committee on Reforms in Cricket has recommended that the Board of Control for Cricket in India (BCCI) should be brought under the purview of the Right to Information (RTI) Act to bring in transparency in the functioning of this sports body. Here are excerpts from the report of the Lodha committee]

Shortly after this Committee was constituted, an effort was made to view the prevailing Constitution and bye-laws of the BCCI from its website, which proved to be futile, as the website did not carry these basic documents.

Many stakeholders, in the course of interactions with the Committee stated that very little of the functioning of the BCCI is done in a fair and transparent manner and that those who seek greater information are either rebuffed by the Board or won over by enticements. Those whose professional livelihoods depend on cricket acknowledge the BCCI's total sway over the sport, and choose to remain silent rather than upset the apple cart.

Objective commentary ought to be permitted about everything connected to the match, allowing the commentators to express themselves freely and objectively.

As the medium is very important, it is necessary that to serve both Players' and the public, all Rules, Regulations, Codes and Instructions of the BCCI be translated into Hindi and both versions be uploaded onto the official website by the BCCI and its Members. It is also necessary that the BCCI use the latest and updated tools of Information Technology in governance, management and general decision making.

Commerce has also overtaken the enjoyment of the sport, with advertisements continuing many a time, even after the first ball and again commencing even before the last ball of the over is played, thereby interrupting the full and proper broadcast

of the game. Regardless of the wicket that has fallen, century having been hit or other momentous event, full liberty is granted to maximise the broadcaster's income by cutting away to a commercial, thereby robbing sport of its most attractive attribute – emotion. It is recommended that all existing contracts for international Test & One-Day matches be revised and new ones ensure that only breaks taken by both teams for drinks, lunch and tea will permit the broadcast to be interrupted with advertisements, as is the practice internationally.

Also, the entire space of the screen during the broadcast will be dedicated to the display of the game, save for a small sponsor logo or sign.

A perusal of the expenses of the BCCI, particularly with reference to the attendance of meetings of the various sub-committees as well as the expenses on professional services suggests

that there ought to be better financial management. Keeping in mind that the BCCI is not for profit, resources must be used for the development of the game, and financial prudence must be exercised to avoid

unnecessary expenditure.

There appear to be no standard norms and objective criteria for the selection and empanelment of professionals in the fields of law, audit, etc. Similarly, even.

In the light of all this, the Committee proposes that clear principles of transparency be laid down, and the BCCI website and office will carry all



Even in regard to cricket commentary, games organized by the BCCI have a contractual condition that there can be no criticism of the BCCI or its selection process, thereby curtailing an exercise of free speech.

rules, regulations and office orders of the BCCI, the constitution of the various committees, their resolutions, the expenditures under various heads, the reports of the Ombudsman/Auditor/Electoral Officer/Ethics Officer and the annual reports and balance sheets. In addition, norms and procedures shall be laid down for the engagement of service professionals and contractors, and there shall be full transparency of all tenders floated and bids invited by or on behalf of the BCCI. The website shall also have links to the various stadia with seating capacities and transparent direct ticketing facilities.

The Right to Information Act, 2005 (RTI Act) enacts that public authorities shall make known the particulars of the facilities available to citizens. While the issue of the BCCI being amenable to the RTI Act is sub judice before the High Court of Madras in W.P.No.20229/2013, many respondents who appeared and interacted with the Committee were of the view that BCCI's activities must come under the RTI Act. Having regard to the emphasis laid

as far as infrastructure contracts, media engagements, television rights and equipment supply, no norms or procedures exist to select or engage contractors in a fair and transparent manner.

by the Hon'ble Supreme Court that BCCI discharges public functions and also the Court's reference to indirect approval of the Central and State Governments in activities which has created a monopoly in the hands of the BCCI over cricket, the Committee feels that the people of the country have a right to know the details about the BCCI's functions and activities. It is therefore recommended that the legislature must seriously consider bringing BCCI within the purview of the RTI Act.

The Committee also believes that the Auditor be tasked not only with a financial analysis, but also specifically carry out a performance audit (Compliance Report) to

determine whether the State associations have actually expended their grants towards the development of the game and mark them on a report card which will be utilized to determine the due they deserve the following year. This oversight also needs to consider the high and unreasonable expenditures by the Board on various heads, which would have to be limited and streamlined.

Women demand right to worship

Across the religious divide, women are staking their claim to equality and causing a dent in one of the strongest bastions of patriarchy. Whether any authority governing a place of public worship is empowered to prohibit women's entry, in clear violation of the constitutional mandate of equality, is the issue which our courts will have to decide in the near future. The verdict will be a landmark ruling within Constitutional law and will have a far-reaching impact upon women's rights in other spheres as well.

At one end is a petition filed by the Indian Young Lawyers Association seeking a direction for striking down the rule of barring women from the renowned Sabarimala Ayyappa temple in Kerala. While hearing this petition recently, a three judge bench of the Supreme Court headed by Justice Deepak Misra questioned the basis of such prohibition.

At another level a group of Muslim women staged a protest demanding entry into the sanctum sanctorum of the historic Haji Ali dargah, claiming that the restriction is of recent origin and is arbitrary since several dargahs in Mumbai permit women to enter the inner sanctums of a dargah. In response to a petition filed by two Muslim women which is pending before the Bombay High Court, the representatives of the trust which manages the affairs of the dargah stated that women are provided separate entrance to "ensure their safety". They also claimed that if men and women are allowed to mingle, it would not only distract men but also would be against the tenets of Islam. But the women have scorned at this saying that the discrimination is based on patriarchy and not religion. Women have also been protesting outside the Shani Shingnapur temple in Ahmednagar claiming their rights to offer prayers at the inner sanctum of temple. But the authorities have refused to allow this, claiming that this restriction is based on Hindu tradition and culture. The authorities of the Sabarimala temple justify the ban on the ground that since Lord Ayyappa, the temple deity, was a Brahmachari, menstruating women will "pollute" the deity.

Courtesy: Thewire.in

How to select Information Commissioners

Delhi Police Commissioner Bhim Sain Bassi was reported to be in the running for the post of Central Information Commissioner after retirement on February 29, 2016, but the JNU and Patiala House court controversies stalled his appointment. In light of this former CIC Shailesh Gandhi has suggested that a transparent procedure should be followed for selection of information commissioners.

Gandhi has suggested there should be an insistence on public exposure for those who are interested in becoming information commissioners. Many information commissioners have no understanding or interest in transparency, or the Right to Information Act. This is an affliction which is true for many people in power.

The Central Information Commissioners are selected as per the law by a committee consisting of the prime minister, the Leader of the Opposition and one minister. This committee has no time to understand and evaluate the applicants. Hence, the recommendations and shortlisting is generally done based on political and bureaucratic patronage.

The procedure that Gandhi has suggested is as follows:

1. The information commissions should set a target for disposal of cases — over 5,000 per commissioner per year. Presently the annual disposal varies from 1,000 to 6,000, with most commissioners disposing around 2,000 to 3,000.

2. Every six months they should review the actual performance per commissioner and forecast the expected receipts and disposals for the next two years. This information should be displayed on their Web sites. This forecast would show the requirements for new commissioners to be appointed by taking into account the expected retirements.

3. The government should advertise its intention to appoint a certain number of information commissioners depending on the need, six months in advance. A detailed list of eligibility criteria should be made available giving essential and desirable qualifications. Eminent people could apply or be nominated by others.

4. A search committee perhaps consisting of two members of Parliament, one Supreme Court judge and two RTI activists could be formed to shortlist a panel which could be three times the number of commissioners to be selected. These could be announced with

the minutes of the meeting at which the shortlisting was done.

5. An interview should be held by the search committee in public view, to give citizens and the media the opportunity to hear the views and commitment of the candidates. Citizens could give their feedback and views to the search committee.

After this the search committee could give its recommendation for two times the number of commissioners to be appointed. Based on these inputs, the final decision to select the commissioners could be taken by the committee as per the Act consisting of the PM, LoP and one minister. (A similar process could be adopted for state commissions with MLAs instead of MPs and a high court judge instead of Supreme Court judge).

Presently most commissioners have no passion for their work which leads to their output and quality being seriously affected. During 2011, six Central Information Commissioners disposed 22,351 cases, whereas in 2014 seven commissioners disposed only 16,006 cases. The Maharashtra commission has set a target of 4,800 cases per year for each commissioner. Accountability must be the hallmark of the transparency commission's working.

Courtesy: Rediff.com

A transparent process for selection would lead to a better environment for the RTI Act implementation.

New Aadhaar Bill raises fresh questions on Privacy

The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016 was introduced in Lok Sabha on March 3, 2016. Some issues in the Bill 'as analysed by PRS Legislative Research, are presented below:

1. Allowing private agencies to use Aadhaar contradicts statement of objects and reasons of the Bill

Clause 7 of the Bill: The government, for the purpose of delivering subsidies, benefits or services, may require an individual to: (i) verify his identity under Aadhaar, (ii) show proof of possessing an Aadhaar number, or (iii) if a person does not have Aadhaar, enrol for Aadhaar. Further, if a person does not have Aadhaar, the Bill requires that an alternative be provided to establish his identity.

Clause 57 of the Bill: Any public or private person may use the Aadhaar number for establishing the identity of any individual for any purpose.

Issue: The Statement of Objects and Reasons of the Bill states that identification of targeted beneficiaries for delivery of various government subsidies and services has become a challenge for the government. The Bill allows the government to establish Aadhaar as a means of identification to ensure efficient and targeted delivery of government subsidies and services. At the time of the introduction of the Bill, the government stated that "the Bill confines itself only to governmental expenditure."² However, the Bill also allows private persons to use Aadhaar as a proof of identity for any purpose.

This provision will enable private entities such as, airline, telecom, insurance, real estate etc. companies, to require Aadhaar as a proof of identity for availing their services.

2. Issues with sharing information collected under Aadhaar

Under the Bill, the UID authority maintains a database which includes: (i) identity information

of individuals which includes biometric information, demographic information and Aadhaar number, and (ii) authentication records of an individual's identity (i.e. time of request, identity of the entity requesting for authentication, and the response provided). The Bill prohibits the UID authority from sharing this information with anyone. This information may be disclosed in the interest of national security, or on the orders of a court.

In this context, we highlight some specific issues related to: (i) power to order disclosure of information in the interest of national security, and (ii) the potential to profile individuals using Aadhaar.

Note that provisions in the Bill with regard to protection of identity information and authentication records may be affected by an ongoing writ petition in the Supreme Court. The petition claims that Aadhaar may be in violation of right to privacy. A five judge bench of the court is

examining whether right to privacy is a fundamental right.

Disclosure of information to intelligence or law enforcement agencies

Clause 33(2) of the Bill: Identity information and authentication records may be disclosed in the interest of national security. This will be on the direction of an officer who is at least a Joint Secretary in the central government. Such a direction has to be reviewed by an Oversight Committee (comprising Cabinet Secretary, Secretaries of Legal Affairs and Information Technology) and will be valid for 6 months.

Issue: The provisions regulating disclosure of private information under the Bill differ from guidelines specified under another law. In 1996, the Supreme Court interpreted provisions under the Indian Telegraph Act, 1885 with regard to the state being allowed to tap telephones. The Court held that the state may tap telephones only at the occurrence of any public emergency or in the interest of public safety if: (i) it is authorised by the Home Secretary of the central or state government; and (ii) it is for a maximum period of

Provisions relating to protection of identity information and authentication records may be affected by an ongoing petition in the Supreme Court which claims that Aadhaar may be in violation of right to privacy

six months. Each order of telephone tapping must also be investigated by a separate Review Committee within a period of two months from the date of issuance.⁴

The Bill differs from the guidelines for phone tapping in the following two ways. First, the Bill permits sharing in the interest of ‘national security’ rather than for public emergency or public safety. Second, the order can be issued by an officer of the rank of Joint Secretary, instead of a Home Secretary. Under the Indian Telegraph Act, 1885 it is only in ‘urgent situations’ that directions for phone tapping may be given by a Joint Secretary.⁵

Potential to profile individuals

Issue: The Bill does not specifically prohibit law enforcement and intelligence agencies from using the Aadhaar number as a link (key) across various datasets (such as telephone records, air travel records, etc.) in order to recognise patterns of behaviour.

Techniques such as running computer programmes across datasets for pattern recognition can be used for various purposes such as detecting potential illegal activities.⁶ However, these can also lead to harassment of innocent individuals who get identified incorrectly as potential threats.⁷ As a safeguard against such inappropriate profiling, the US has enacted a law that requires each agency that is engaged in data mining to submit an annual report to Congress on all such activities.⁸

3. Conflict of interest: UID authority’s exclusive power to make complaints

Clause 47(1) of the Bill: *Courts cannot take cognizance of any offence punishable under the Act, unless a complaint is made by the UID authority, or a person authorised by it.*

Issue: This provision implies that no complaint will be admitted before a court unless it has been filed by the UID authority. This may present a conflict of interest as under the Bill the UID authority is responsible for the security and confidentiality of identity information and authentication records. There may be situations in which members or employees of the UID authority are responsible for a security breach.

4. Discretionary powers under delegated legislation

Demographic and biometric information collected

Clause 2(k) of the Bill: *Demographic information will include name, date of birth, address and other information that is specified*

by the UID authority. However, such information cannot include race, religion, caste, tribe, ethnicity, language, records of entitlement, income or medical of the individual.

Issue: The Bill empowers the UID authority to specify demographic information that may be collected. The only restriction imposed on the authority is that it shall not record information pertaining to race, religion, caste, language, records of entitlements, income or health of the individual. This power will allow the authority to collect additional personal information, without prior approval from Parliament.

It may be noted that the enrolment form currently being used contains fields for capturing information such as the National Population Register (NPR) receipt number, mobile number, bank account number, etc.⁹ Though these fields are labelled ‘optional’, it is unclear why this additional information is being recorded.

Clause 2(g) of the Bill: *Biometric information includes photograph, fingerprints, iris scans and other biological attributes of an individual specified by the UID authority.*

Issue: The Bill specifies biometric information to include photograph, fingerprints, and iris scans. Further it empowers the UID authority to specify other biological information that may be collected. Therefore, the Bill does not prevent the UID authority from requiring the collection of biometric information such as DNA.

Time period for maintaining authentication records

Clauses 32(1) and 54(w) of the Bill: *The Bill provides that the UID authority will maintain details of every request for authentication (i.e. time of request, identity of the entity requesting for authentication, and the response provided). The time period for which this information is stored will be specified by regulation.*

Issue: The Bill does not specify the maximum duration for which authentication records may be stored by the UID authority. Instead it allows the UID authority to specify this through regulations. Authentication records contain information regarding: (i) the time of authentication request, (ii) names of entities that seek to verify an individual’s identity, and (iii) response received. This information could provide insights into activities of an Aadhaar holder through their use of Aadhaar. Maintaining authentication records over a long time period may be misused for activities such as profiling an individual’s behaviour.

Courtesy: PRS Legislative Research

Every coop society not public authority under RTI

As the Public Information Officer of Registrar of Cooperative societies failed to act on an order and refused to give information under RTI, and harassed a senior citizen, central information commissioner **Madabhushi Sridhar** awarded compensation in the case.

The Registrar of Cooperative societies (RCS) is a regulatory body overseeing working of cooperative societies. In Delhi there are thousands of cooperative units, most of them being housing societies for who the land was given in concession rates by the government.

As a result, RCS office is flooded with hundreds of RTI applications about various societies. Most of these societies are suffering from warring factions, where one group will prefer to file RTI requests and complaints against the management. Complainants and information seekers are either former member of executive or present leaders.

When the dispute reaches arbitration and an award is passed, it's an important phase in a fierce battle against irregularity. But execution of award is equally tough task. In one such case Tanuj Bahal filed a RTI request to know about enforcement of arbitration award. He used RTI to pressurize RCS to act, as RCS did not take any action on his complaints. No information was given in spite of orders issued by the first appellate authorities.

This resulted in penalty proceedings against the Public Information Officer of the RCS by issuing show cause notice. The order of CIC to give information within 15 days also was not complied with. Behal is a senior citizen aged 65 years seeking to know why Rs 6 lakh amount was not recovered from a non-member who illegally occupied a flat of the society in spite of

the arbitration award. He listed the number of non-responses from the RCS.

The CPIO was neither refusing even though notice for hearing was sent to him nor was responsive to show cause notice for contravening RTI Act. He also did not comply with the direction given by the Commission to provide information within 15 days. Krishan Kumar (CPIO at the time of filing of RTI application) was given several chances to respond to show cause notice, but he did not avail the opportunity to comply with the order of CIC. On 14.12.2015 the Commission noted his absence and gave another chance to explain by giving him additional time of 21 days.

The Commission also cautioned the Registrar of Co-operative Society, if they failed again the Commission would be compelled to initiate penalty proceedings. Yet there was no response. Thus the CIC concluded that CPIO has rendered himself liable to be

penalised for the deliberate lapses attributable to him alone, in furnishing information in absence of a justified reason there of and also for non compliance of CIC order.

The High Court of Karnataka had observed in 2009 that “the provisions contained in Section 20 of RTI Act show that the Commission has been conferred with the jurisdiction to penalise the defaulting officer by levy of penalty up to a total amount of Rs 25,000/- and also recommend for disciplinary action under the service rules applicable to the defaulting officer. It is thus clear that the RTI Act itself provides the procedure and remedy.

It is cardinal principle of statute, well settled by Catena of decisions by the apex court, that courts or tribunals must be held to possess power to execute its own order. Further the RTI Act, which is a self-contained code, even if it has

Each and every housing society claims that it is not public authority and thus not answerable under RTI Act. The Supreme Court also held that every society as such is not public authority unless the same is considered and declared as public authority by the Commission.

not been specifically spelt out, must be deemed to have been conferred upon the Commission the power in order to make its order effective, by having recourse to Section 20.”It appears that Krishan Kumar

The former CPIO had intentionally not complied with the orders of the Commission without any reasonable cause. Considering above fact the Commission imposes a maximum penalty of Rs. 25,000/- upon him for his recalcitrant approach in dealing with RTI application of the appellant and for contravening provisions of the RTI Act more than once.

The CIC directed Tanuj Bhanot, of Rashi Co-operative Group of Housing Society to show

cause why maximum penalty should not be imposed upon him for non-compliance of the Commission’s order. The new CPIO, Ashok Kumar Navet assured to trace the files and provide.

The appellant disputed the claim of the CPIO that the file is not traceable. He said that file was available in the office of public authority, and that the CPIO is misleading the Commission only to escape from the liability for in-action. As Behal’s grievance is well founded the Commission awarded a compensation of Rs 10,000/- to him who was harassed by RCS officers without any regard to his age of 65 years.

Ghayal Once Again : RTI on silver screen

A number of cases of attacks on RTI activists are often reported from various parts of the country. Some attacks are murderous and activists are brutally killed. Now one such story has made it to Bollywood, in the form of *Ghayal Once Again* featuring Sunny Deol. The actor has returned as Ajay Mehra, a righteous man with a feared right hook. *Ghayal Once Again* opens with a black and white recap of the events of 1990, which saw Mehra imprisoned. This sequel, directed by Deol, unfolds in 2015, with Mehra still plagued by the demons of his past. Now, he leads a group of vigilantes committed to meting out justice when the system fails. In this, he’s supported by his neurologist, Rhea (Soha Ali Khan).

The crux of the plot revolves around the suspicious death of RTI activist Joe (Om Puri). Four teenagers stumble upon a video clip that

exposes the truth behind Joe’s death, one that incriminates the megalomaniac son of a powerful and arrogant industrialist with a hotline to MPs. Industrialist Bansal (Narendra Jha) lives with his wife, mother, son and daughter in a high-rise with its own helipad, which looks curiously like the most expensive private residence in India.



The teenagers put their faith in Mehra to help them get the video into the right hands, but Bansal’s reach and determination to protect his son Kabir is so blind and bold that he chases, kidnaps, kills and beats up arbitrarily. But with Mehra and his heavy-duty punch on Bansal’s tail, there is an abundance of action scenes

that are extremely well designed by Parvez Shaikh and ably supported by Chandan Arora’s deft editing. It’s the long action sequences that hold your interest. The emotional core too is intact, compensating for the shrill supporting cast and tacky computer-generated imagery.

Courtesy: Livemint.com

Ministers are public authorities under RTI

In a landmark ruling, Madabhushi Sridhar Acharyulu, Information commissioner in CIC has ruled that ministers in the central government as well as in all states governments are 'public authorities' under Section 2(h) of the RTI Act. All ministers thus have a statutory obligation to provide information to people as mandated by the Act.

Acharyulu has recommended to the Centre and states to provide necessary support to each minister, including designating some officers, or appointing as Public Information Officers and First Appellate Authorities. They shall also be given an official website for suo moto disclosure of the information with periodical updating as prescribed under Section 4.

Ministers will also have to provide facility of meeting people since they deserve necessary assistance to receive, acknowledge and provide response to the representations given by the people and as Constitutional functionaries. Ministers have a duty to inform the people about their efforts to fulfill promises they have made, through Section 4(1)(b) of RTI Act and also to furnish the information as sought by their voters under other provisions of RTI Act.

Exercising the power given under Section 19(8)(a)(ii) the Commission requires the public authority, especially, the Cabinet Secretary of Union and all Chief Secretaries of States, to take such steps as may be necessary to secure compliance of the Act and directions of appointing a Public Information Officer within two months, so that ministers will respect the right to information of the citizen which was passed by the Parliament and considered as fundamental right intrinsic in Article 19(1)(a) of the Constitution, and be answerable and accountable to the citizens.

The following are excerpts from Acharyulu's order dated March 12, 2106:

Both commonsense and Constitution suggests Minister is an authority constituted 'by and under the Constitution'. There are many specific provisions which prove this statement. Minister is authority constituted by Constitution, because: Article 74 says there shall be a Council of Ministers to aid and advise President; Article 75 says that Ministers shall be appointed by the President on the advice of Prime Minister. Article 75(2) says that the Minister shall hold the office during the pleasure of the President.

Minister's salaries are determined by law made by Parliament from time to time by law- the Salary, Allowances and Pension of Members of Parliament Act, 1954. This is another characteristic that makes Minister a public authority. [Refer S 2(h)(b) of RTI Act, 2005]

Similarly, regarding the Council of Ministers in States, the Articles 163 and 164 provided for the appointment and salaries of the Ministers. Each member of Council of Ministers both at State level and Union is provided with the office, sufficient staff and other resources and infrastructure. Some senior scale civil servants also serve them. Entire expenditure of provision and maintenance of the office along with salaries to the staff members is borne by the Government and paid from the tax-payers money. Thus state Minister is 'public authority' as per Section (h)(a) of RTI Act, 2005.

Without being an MP or MLA, one cannot hold office of the Minister in the Council of Ministers. The Representation of People Act, 1950 which is enacted to provide the allocation of seats in, and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories. Thus this law made by Parliament explained how

The Commission has also suggested implementation of recommendations made by the National Commission to Review the Working of the Constitution (NCRWC) and the Administrative Reforms Commission, to replace the 'oath of secrecy' with 'oath of transparency'

the office of MP or MLA has been instituted to become Minister, which also a public authority. Thus the Minister is constituted as public authority by 'law made by Parliament' as per Section 2(h)(b) of RTI Act. In addition, Member of Parliament or Legislature is declared as a public servant in *PV Narasimha Rao v State*, by the Supreme Court of India in 1998.

The Salary, Allowances and Pension of Members of Parliament Act, 1954 provides for payment of salaries and pension throughout the life from the state exchequer besides several allowances. Representative of Peoples Act explains that 'member' includes "Minister". This Act also provides for Free Transit by Railway (S 6), Free Transit by Steamer (S 6A), Air travel facilities (S 6C) etc, besides travelling allowances, daily allowances, etc. They get free travel pass in A/C Train compartments for accompanying person also. Under Section 8 they are entitled to Constituency allowance also. According to Section 8A, travel facilities are provided to ex-members also.

Article 75(3) says the Council of Ministers shall be collectively responsible for the House of the People. For the decisions taken in the Cabinet Meeting, whether good or bad, moved by one individual or two, it will become decision of the entire cabinet, once approved, and makes all together responsible. However it does not exclude individual minister's responsibility as overall in charge of a portfolio and independent decision maker in that area. The Minister's privileged issues if any are rightly excluded by the exceptions in RTI Act, such as Section 8(1)(a), (c), (f), (i). The proviso at the end of the section 8(1) which says "the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person" makes it clear wherever Minister is answerable to Legislators, he can also answerable to the ordinary citizen.

Definition of authority

The expression "authority" would also include all persons or bodies that have been conferred a power to perform the functions entrusted to them

under the constitution and merely because the Ministers are individuals, the same would not render the office of the Cabinet Minister any less authoritative than other constitutional functionaries. The expression "authority" as used in Section 2(h) cannot be read as a term to exclude bodies or entities which are, essentially, performing functions in their individual capacity. The expression "authority" as used in Section 2(h) of the Act would encompass any office that is conferred with any statutory or constitutional power.

The probable claim that Cabinet Minister does not have the necessary infrastructure to support the applicability of the RTI Act in as much as, the Minister is a singular person office and, therefore, would have to act as a CPIO as well as the Appellate Authority and hence cannot be held as

'Public Authority' is not tenable. If lack of infrastructure is prescribed as the criteria for imposing transparency obligations, then none would be obliged to inform. That was never the intention of the RTI Act. Maharashtra State

Chief Information Commissioner has declared on 25th September 2015 that each Minister of Maharashtra state as public authority and directed the Chief Secretary to appoint PIOs and First Appellate Authorities accordingly. As per the media reports the Chief Secretary agreed to implement the same.

Thus Very title of the Act suggests that they are expected to represent the people who elected them and also because they administer them in their capacity as Ministers of a particular portfolio of the Government. No honest and sincere minister would refuse to inform the people who elected him/her.

Though the definition in Section 2(h) provides several conditions and circumstances to declare an authority as 'public authority', the first clause in that definition itself substantially covers each and every Minister of both Center and State Governments. The 'Minister' is an institution within the scheme of the democratic Constitution. Being a Minister itself is public authority and as minister is associated with and assisted by an office, he

There is no reason why Ministers should be kept beyond the purview of Right to Information, as their answerability is well established by the Constitution and Representation of People Act.

cannot escape from the responsibilities under Right to Information Act. That office should facilitate access to people to the information held by it.

Subject to availability and convenience of the Minister at office in capital city or in Constituency, the minister owes a moral and democratic responsibility to meet his voters or people in the constituency. It is the democratic right of voters to meet him and also it's his duty to meet voters which will go a long way in achieving the objectives of good governance through transparency as envisaged by the RTI Act.

Extending logically, this duty includes a genuine responsibility of the office of the Minister for Law & Justice/Minister of State (not the Ministry) to inform the people when they could meet him. This is a facility that they are expected to provide to the people who elected the Ministers. The information about such facility should be disclosed voluntarily by the office of Minister under section 4(1)(b) within 120 days from the date of commencement of law. If there is no such facility of meeting, the Minister's office should declare that "there is no such facility" in a particular week/fortnight/month/year, as required under Section 4(1)(b).

Secrecy versus transparency

The National Commission to Review the Working of the Constitution (NCRWC) headed by Justice M N Venkatachalaiah, former Chief Justice of India, in 2002, referring to the Right to Information stated: "Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases.....In this regard, government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy.

The Second ARC recommended: "As an affirmation of the importance of transparency in public affairs, Ministers on assumption of office may take an oath of transparency along with the oath of office and the requirement of administering the oath of secrecy should be dispensed with.

Articles 75(4) and 164 (3), and the Third Schedule should be suitably amended. (b) Safeguard against disclosure of information against the national interest may be provided through written undertaking by incorporation of a clause in the national security law dealing with official secrets. (2.4.4)"

It needs no mention that in a welfare state, Minister is a key functionary being in charge of a portfolio, or group of departments in a ministry. Instead of leaving it to the individual discretion, the law should mandate the transparency including the information about facilitating the 'meeting' with people. In this information age, the Right to Information Act has relegated the Official Secrets Act into irrelevance in many aspects except protecting security related secrets.

It will be more appropriate to pledge for transparency rather than confining to oath of secrecy. The Right to Information Act has been deliberated and cleared by the Union Cabinet and passed by both the Houses of Parliament. Similarly several State Cabinet Ministers discussed and presented to their respective Legislative Assemblies who passed transparency laws. When Ministers wanted every other authority answerable, why should they also not be answerable under RTI Act?

Even if he takes oath of transparency, it will not oblige him to disclose various kinds of information, such as that prejudicially affect the sovereignty and integrity of India etc as delineated in 8(1)(a), information, the disclosure of which would cause a breach of privilege of Parliament or State Legislature (c); information received in confidence from foreign government (f), and cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers (with a proviso) (i). Section 8(2) allows the public authority to provide access to papers not withstanding anything contained in Official Secrets Act, 1923 in cases of public interest. In addition, Section 22 of RTI Act gives information law an overriding effect over the Official Secrets Act or any other law if that contradicts with RTI. Hence the Minister has to take an oath of transparency in place of obsolete 'oath of secrecy' or at least in addition to it.

Digital divide is real and thriving

With the internet becoming essential for education, communication, livelihoods and government services and entitlements, access to the internet is no longer a privilege or luxury. Those who do not have access to the internet or have rudimentary or limited access will fall further and further behind in the digital age. Pune-based Centre for Communication and Development Studies (CCDS) has done a study that examines the extent of digital inequality in urban areas. Here are the main findings of this study.

The study explored the barriers to internet access for a broad spectrum of low-income and socially-excluded populations in Pune, where roughly 40% of citizens live in informal settlements or slums. Data on the extent of digital inequality and its causes will offer crucial insights for the digital inclusion of marginalised urban populations.

Extent of digital inequality

The study, undertaken between July 2013 and December 2015, surveyed nearly 10% of households in six low-income settlements of the urban agglomeration - a total of 1,634 households. It revealed that only 18% of adult residents use the internet, despite taking a very broad definition of internet user, including all those who have ever accessed the internet on any device, anywhere, in the last three months.

Further inequalities in internet access within the settlements were observed along the lines of gender, age, education, wealth and occupation.

Digital inequality by gender: There is a big gender gap: 16% of women in the study locations are internet users compared to 58% of men. The number of non-users among women is double the number for men.

Digital inequality by age: There is a big age gap: The majority of users – 64% – are in the 16-20 age-group. Only 7% of the 35+ report internet use.

Digital inequality by education: Use of internet rises as levels of education rise. There are few users with no education or only primary education. Households where a family member had completed schooling or was enrolled in Standard 10 were three times more likely to be connected to the internet than households without an educated member.

Digital inequality by wealth: Affordability strongly determines internet access. A higher proportion of internet users fall in the upper wealth quintiles.

Digital inequality by occupation: Students and those in more secure jobs in the formal or informal sector were much more likely to be online than daily-wagers or non-working people.

Digital inequality due to lack of awareness: In the margins of the city where the study populations live, roughly 40% of non-users have never even heard of the internet.



Barriers to access

Infrastructural constraints: No wired broadband services are offered in the low-income settlements although these services may be available in commercial and middle-income residential areas a stone's throw away. No free or subsidised public access points are available in the settlements and commercially-operated cybercafes tend to be located some distance away. Users reported the variable network connectivity and coverage offered by mobile telecom service providers as a major barrier to fuller use.

Economic constraints: Households that are poorer are constrained by the absence of enabling infrastructure like computers, dongles, smartphones and feature phones, as well as the cost of internet services.

Educational constraints: Education is also linked to purpose of use. Though at the time of the survey users were mainly logged onto social networks and entertainment sites, those with higher levels of education up to higher secondary/ diploma/ vocational courses were also using it for education/

jobs and information search. Regardless of level of education, however, use of the internet for online transactions and e-governance services was limited, indicating that they might not be user-friendly for these diversely-literate populations with very basic internet infrastructure.

Lack of ICT skills: Lack of the skill to use computers and other digital devices like smartphones and tablets keeps a big section of the study population away from the digital world. Households where a family member had learnt how to use a computer were four times more likely to be connected than households where no member used a computer.

Gender constraints: Gender differences begin with literacy, with 70% of women literate compared to 87% of men. Only 40% of women own their own mobile phone compared to 79% of men. Fewer women than men can use a computer. But the biggest barrier for women appears to be the absence of agency and autonomy in going online, either on their own or family member's device or at public access points like cybercafes. The internet is considered unsafe and inappropriate for women in these neighbourhoods.

Attitudinal constraints: Some non-users believe that the internet has nothing relevant to offer them. Others believe it is addictive and a waste of time, with a strong potential for misuse.

Regardless of the congested and unhygienic environments in which the study populations live, regardless of their economic and educational constraints, poor housing and absence of digital infrastructure, digital communication is very important to respondents: Ninety-seven percent of the households studied had a mobile phone and 89% had television. An overwhelming 80% of users and 78% of non-users said that internet was as basic a necessity as electricity. There is a strong aspiration to go online and be part of the digital society.

Recommendations

The CCDS study offers a reality check on the digital 'revolution' that is being celebrated in India. It points to the enormity of the task of digital inclusion if ambitious programmes such as Digital

India are to benefit all citizens, not just the broadband elites. It illustrates that digital equality is not just about getting people connected to the internet. It is about ensuring that everyone has equal opportunity to access high-speed and affordability internet services, as well as the media/digital literacy to use the technology to the fullest.

Some of the recommendations that study are:

Reframing the digital divide debate and shifting the focus from access to technology alone to access + adoption, with a focus on the social contexts of technology.

Providing high-quality internet access for marginalised urban communities: While free/subsidised Wi-Fi spots can facilitate quick access on mobile devices, fuller use of the internet is best enabled through public access centres with high-speed broadband on computers. The location of these public access centres within or close to low-income areas will facilitate access by women in particular. The presence of mentors will help users make fuller use of the internet, including applying for state entitlements and services.

Enhancing user capability by offering short workshops and trainings with flexible timings and audio-visual instruction in place of the one-size-fits-all ICT trainings offered in the state at present.

Improving the quality of ICT training and infrastructure in schools that cater to the urban poor.

Raising awareness of the internet and its benefits by developing concrete examples of use for particular communities and demonstrating the value of internet for them.

Addressing social acceptability through awareness-generation on online safety and responsible use of the internet.

Building relevant (local) content and services and making them available in regional languages to help marginalized groups access information related to livelihoods, health, housing, education, personal enrichment, public amenities and entitlements.

Courtesy: "Towards Digital Inclusion : Barriers to internet access for economically- and socially-excluded urban communities", CCDS, Pune



No to transparency in judicial appointments

In a setback to transparency in higher judiciary, the Central government has decided against bringing appointments to the higher judiciary under the RTI Act's purview.

Giving this information to the media Law Minister D V Sadananda Gowda claimed that transparency "can be achieved even without it".

Gowda said the revised draft Memorandum of Procedure (MoP) to guide appointments to the Supreme Court and the high courts was in the "final stage", and it would be sent to the Chief Justice of India (CJI) soon.

Asked whether the draft MoP provides for bringing judicial appointments under the ambit of the Right to Information Act, a long-standing demand from jurists and others, Gowda replied in the negative. When pointed out that Section 8 of the RTI Act, which deals with exemptions to the Act, doesn't exclude judicial appointments from the purview, the minister said, "Transparency can be attained without the RTI Act also."

Incidentally, during hearing of petitions about the constitutionality of the National Judicial Appointments Commission (NJAC) Act, the government had repeatedly argued that the collegium system of appointment was opaque, also asserting that any appointment should be open to scrutiny under the RTI Act.

Asked whether he had met CJI T S Thakur in the process of drafting the MoP, Gowda replied in the affirmative but refused to comment further. He said while drafting the MoP was the responsibility of the Executive, both the Judiciary and the Executive have to "agree" on the final draft.

New rules for RTI in UP

The Centre has circulated the newly framed Uttar Pradesh Right to Information (RTI) Act rules to all state governments and Information Commissions that has not gone down well with activists.

Under the Uttar Pradesh rules, notified on December 1, 2015, any application beyond 500

words can be rejected by a public information officer. Under the RTI Act, it is mandatory for an information officer to transfer the request of an applicant within five days of receiving it, if it does not pertain to his charge.

RTI activists insist that UP's version renders them vulnerable and they are particularly irked by what they see as an attempt to model Central RTI rules along those lines.

The Department of Personnel and Training (DoPT), nodal department for RTI matters, circulated Uttar Pradesh's RTI rules in January and is considering a workshop for discussion.

Venkatesh Nayak of Commonwealth Human Rights Initiative was quoted in Economic Times as saying, "This is an unprecedented move by DoPT. It would have been better advised to hold a workshop on the various RTI rules notified by state governments, which would have led to a harmonising. We are surprised Uttar Pradesh rules have been circulated since several others — like Uttarakhand — have better versions more in sync with the Central Act."

RTI activist Lokesh Batra, who accessed file notings on the issue, said, "This is an attempt to circulate Uttar Pradesh rules as model rules though they go against the spirit of the RTI Act, apart from making RTI users an easy target in case of life threats and murders. It is a cause for concern."

File notings show DoPT's comments, "Subsequently, we may hold a workshop through CIC and make full use of it."

Whistleblowers face harassment for exposing graft

Underscoring the need to have a comprehensive legislation to protect whistleblowers, the Central Vigilance Commission has told the Supreme Court that many government officials had complained of being harassed for exposing the alleged malpractices in their departments and they were being punished by way of transfer and departmental proceedings.

Taking a serious view of the loopholes in the existing mechanism to protect whistleblowers, a bench of Chief Justice T S Thakur and U U Lalit

asked the Centre to file affidavit on how to improve the current set-up for their protection and also maintain confidentiality.

With Whistleblowers Protection law pending in Parliament for years and in the absence of any effective administrative set-up to deal with the issue, the court said there was absolute vacuum which could not be allowed to go on and directed the government to file response within four weeks.

The court was hearing a PIL filed by NGO Parivartan — seeking its direction for an effective whistleblowers’ protection programme. The petition was filed after Dubey was killed and the apex court had way back in 2004 directed to put in place suitable machinery to deal with the complaints of whistle-blowers.

In compliance with the apex court’s order, the Centre had in April 2004 notified CVC as the designated agency to receive complaints on corruption or misuse of office by government employees, with a clear direction that the identity of the whistle-blowers would not be made public to protect them from any harassment or threat.

CPM wants political parties out of RTI ambit

Bringing a political party under RTI Act will lead to an undemocratic infringement on its confidential discussions, including its attitude to the government and plans to organise agitations against the “wrong policies of the government”, Communist Party of India (Marxist) general secretary Sitaram Yechury has told the Supreme Court.

On behalf of his party, Yechury made the statement in an affidavit filed in response to the Supreme Court’s query why parties should not be declared “public authorities” under the Right to Information Act, 2005. If the court decides that parties are indeed public authorities, six national parties involved in the litigation will be accountable to the public and will have to disclose the details of their income, expenditure, funding and donations and the identity of donors, The Hindu has reported.

The petition filed by RTI activist Subhash Chandra Agarwal and Association for Democratic Rights arraigns Congress, BJP, CPI(M), CPI, Nationalist Congress Party and Bahujan Samaj Party. The petition is based on orders of the Central Information Commission in 2013 and on March 16, 2015, declaring all national and regional parties public authorities. Yechury said his party believed in transparency and giving the public access to the

financial details of political parties. But the CIC’s order to declare parties public authorities was wrong in facts and law. He argued that a political party is a “voluntary association of citizens” who believe in an ideology. They hold free and frank discussions. Declaration of a party as a public authority would “destabilise the very party system in the country.” Opponents would use the RTI Act as a tool to gain access to confidential information.

“In a democratic political system, protection is granted to political parties to keep the confidentiality of the inner-party discussions on policies, programmes, assessment of other political parties, the governments, attitude towards them, chalking out agitations and struggles against the wrong policies of the government, preparation of manifestos, selection of candidates and leaders to the various levels of the party...,” the affidavit said.

Delhi HC amends RTI rules

The Delhi High Court has decided to amend its 2006 RTI rules regarding rate of application fees and the exemption to persons who are below poverty line.

A bench of Chief Justice G Rohini and Justice Jayant Nath has noted that the central government had made the RTI (regulation of fee and cost) Rules, 2005, and had superseded it in 2012 in which rules prescribed the fees for providing information.

“As is evident from the amendments that have now been affected to the High Court Rules as well as the District Rules, the fees structure has been brought in conformity with provisions of the Right to Information (RTI) Rules, 2012 made by the central government. Similarly, the persons who are below poverty line are also expressly exempted from payment of fees, provided a copy of the certificate issued by the appropriate government is submitted along with the application,” the court observed.

It was hearing a plea filed by four law students seeking harmonisation of fees charged under high court’s RTI rules and the parent RTI rules. The plea had also sought quashing of Rule 3 of Delhi High Court RTI Rules 2006, under which separate applications have to be made to access unrelated information. The same was declined by the bench, saying, “no amendment is needed to Rule 3 of High Court Rules”.

The petitioners, including law student Aastha Sharma, had submitted that under Rule 10 of high court’s RTI Rules, Rs 50 is the application fee and

Rs 5 per page was the fee for photocopies of the information sought and had alleged that these amounts are “arbitrary, unreasonable and exorbitant” for the public at large. The application fee under the parent RTI Act is Rs 10 and the fee for photocopies is Rs 2. The plea had said that the RTI Act mandates that the fees should be reasonable and sought that the high court’s RTI rules be harmonised with the umbrella RTI Rules.

Political workers as information commissioners

In Kerala, the state government’s choice of political workers as information commissioners is a violation of the high court and Supreme Court orders, Times of India has reported quoting RTI activists.

Abdul Majeed, a school teacher from Malappuram and secretary of Kerala Pradesh Congress Committee; Aby Kuriakose, Alappuzha DCC general secretary; Ankathil Ajaykumar, state executive member of Janata Dal(U) and former PSC member; Rois Chirayil, public prosecutor and a Kerala Congress (M) nominee, and P R Devadas, president, Viswakarma Sabha and former member of PSC, hardly meet the SC norm of having ‘eminence in their own fields’ to function as information commissioners.

RTI activist D B Binu said these recommendations are in violation of the RTI Act [sections 12 (5) and 15(5)] and added that people have the right to know on what parameters the government had selected these five from a total of 243 applications.

RTI activist Jomon Puthenpurackal, who has written to governor P Sathashivam requesting to reject the recommendations, said the selections are a violation of the court orders and the RTI Act.

Public service commission under RTI

The Supreme Court has ordered to bring the Kerala Public Service Commission (KPSC) under the ambit of Right to Information (RTI) Act. Dismissing the plea submitted by KPSC, the SC has upheld the verdict issued by Kerala High Court in this regard in 2011. The Division Bench headed by Justice MY Mishra issued the order on condition that the identity of evaluators should not be made public. The KPSC had approached the Apex Court stating that the workload and expenses would go up and the secrecy of the exam would be affected once the institution is brought under the ambit of

RTI Act. Rejecting the contentions put forth by KPSC, the SC noted that a constitutional organisation like KPSC should be above suspicion. Moreover, this will help in enhancing the transparency and credibility of the institution, it added.

Maharashtra has no RTI portal

The Maharashtra government says it will soon unveil a website exclusively for Right to Information, according to an RTI reply given on February 22. The website has been in the pipeline for over seven years now. In comparison, the central government already has a website of its own. In a reply to Vihar Durve, the general administration department that looks after the working of the RTI stated that a website would be coming up soon. Durve — who has been continuously following up on the website for years — wanted to know when exactly will the website come up.

“An exclusive website can give details about various notifications and details of the RTI. There is an immediate need for one. Through an exclusive website, applicants can get to know where exactly to find all details about the RTI,” Durve was quoted as saying in DNA.

Among those things that should be put up on the website, he said, are the formats of the RTI application, formats in which public information officer and first appellate authority need to give a reply and various judgments that affect the functioning of the RTI Act.

“There are many new users of RTI who do not have information on its functioning. There should be an exclusive website like the one central government has. Things like RTI application to be filed on one subject and word limit is not known to them. This way they will be able to get hold of information that is useful while filing an application. Also, they should be putting up regular circulars and notifications. Even if they give a link where in all information related to the RTI is given on a separate page like *Aaple Sarkar*, it will be beneficial to citizens,” said Durve.

Slow progress of RTI in Nagaland

In view of ten years of RTI implementation in Nagaland, the Nagaland Voluntary Consumers’ Organisation (NVCO) has conducted a study which has found that awareness level about RTI is still very low in district headquarters as well as

rural areas. The organization came across misuse of funds in MNREGA, Public Distribution System and yet, people were not using RTI to expose corruption. In some village, authorities had fined citizens for filing RTI application without consulting village authorities.

This is happening due to lack of awareness amongst the citizens. A large number of applications filed in various departments related to recruitment of employees in public sector (backdoor appointments), contract works, among others.

PM's wife files RTI application

Jashodaben, wife of Prime Minister Narendra Modi, has filed an RTI application with Regional Passport Office (RPO) in Ahmedabad seeking details about the marriage-related documents Modi had submitted to get his passport when he was Chief Minister of Gujarat.

The RTI plea was made after her application for passport was rejected last November on the ground she did not produce a marriage certificate or a joint affidavit to prove that she is married to Narendra Modi.

"Jashodaben came to the office today and filed an RTI application related to her passport. We will give her reply in due course," said Regional Passport Officer Z A Khan. Khan said her application for passport was rejected in November last year for lack of supporting documents.

According to her brother Ashok Modi, Jashodaben filed the RTI application to know about the marriage-related documents that Narendra

Modi had submitted when he applied for his own passport during his tenure as Gujarat CM.

Expenditure on RTI awareness slashed

Advertisements to create awareness on the RTI Act have been at an all-time low during 2015-2016. As per an RTI reply, expenses on the advertisements till December 28, 2015, have been less than 20% of those spent in the previous fiscal.

The information, provided by the Department of Personnel and Training (DoPT) that looks after the publicity of the Act at the Centre, was given when Pune-based RTI applicant Vihar Durve sought details of the expenses on ads at the central and state level, information on the RTI cell's staff figures, and fines levied on public information officers among others

As per the figures provided, from 2008-09 to 2013-14, expenditure on the Act's publicity by the government has never been less than Rs 5 crore, with even the lowest spending, which was in 2010-11, standing at Rs 6.66 crore.

"They have increased salaries of MPs four-fold and seem to be having the money to build a new parliament building and for PM's foreign trips, but nothing for the publicity of the Act that helps people fight corruption. It is surprising that no MP, including the Opposition, is even talking about increasing the expenses.

There is mounting pendency in the central information commission, with no appointment of commissioners or their staff. All this only shows that both the ruling and opposition parties do not want transparency," said Durve.

Courtesy: [based on news reports appearing in The Hindu, Times of India, Hindustan Times, DNA and Indian Express]

About CMS Transparency

The CMS Transparency team focuses on issues of good governance, raising awareness about the Right to Information Act (RTI) and empowering citizens to benefit from the legislation.

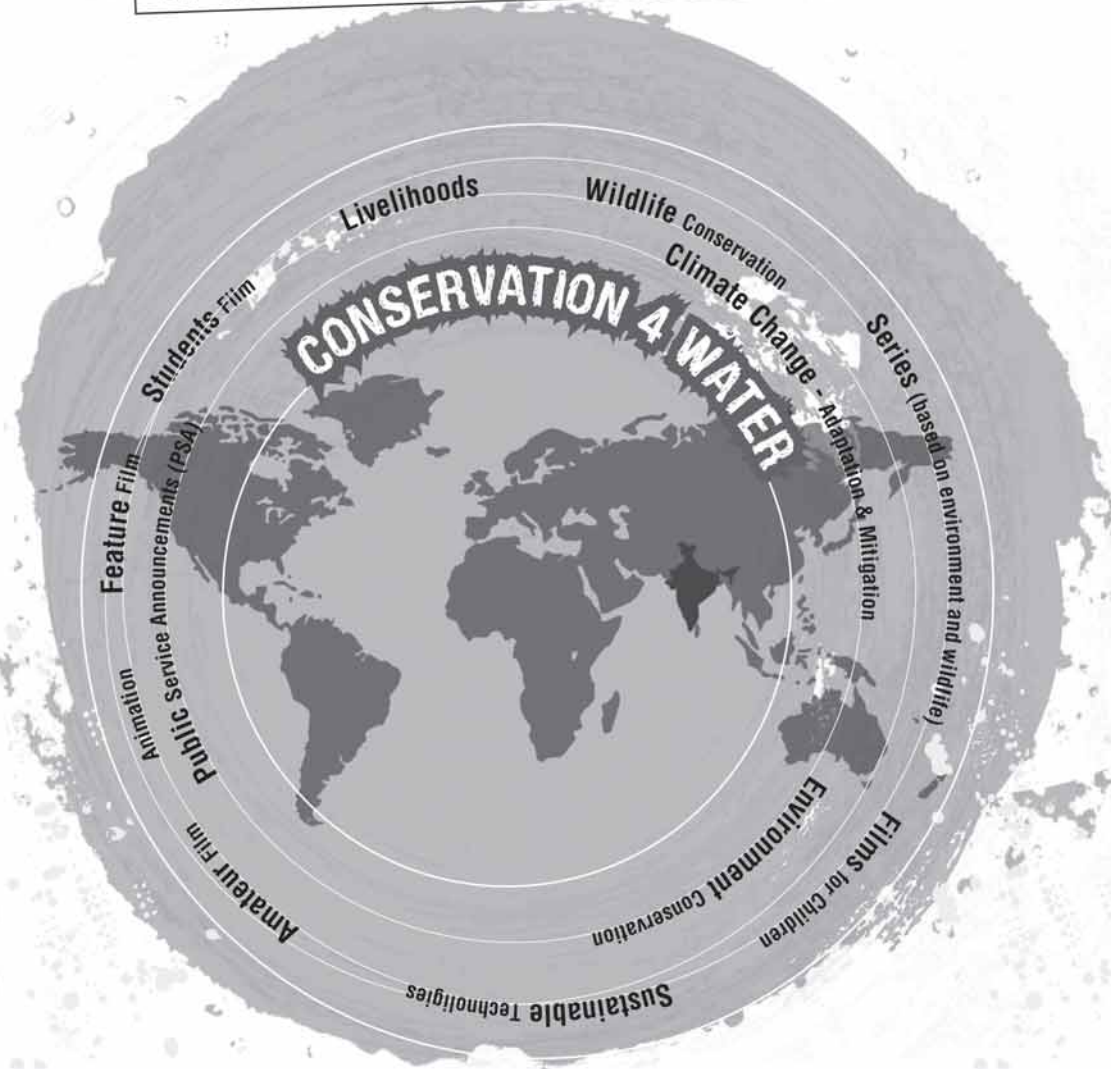
The Right to Information Act 2005 represents a historic breakthrough in recognising the citizen's democratic rights to monitor measures affecting the public good. Following adoption of the Act by the Parliament of India, the CMS has set up a Transparency Studies wing to document, examine and publicise 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.



CMS Transparency
Towards Responsive Governance

RESEARCH HOUSE, Saket Community Centre, New Delhi 110 017 India
P: 91.11.2686 4020, 2685 1660; F: 91.11.2696 8282
E: transparency@cmsindia.org, info@cmsindia.org
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