

# Transparency Review

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

## **MAYAWATI DEBUNKS MEDIA**

### **CONTENTS**

#### **U.P. Assembly Elections**

- |   |  |
|---|--|
| (1) Mayawati Debunks Media, Money & Muscle Power<br>(Dr. N. Bhaskar Rao) -3 | The Chairman of Centre for Media Studies effectively demolishes the pre-election myth of the might of money, musclemen and the media in the success or failure of the respective political parties |
| (2) Silent Revolution in U.P<br>(Mr. Bhibhu Mohapatra) -5                   | The author analyses the results and pinpoints certain notably distinct features in this election   |
| (3) Crime and Punishment<br>(Transparency Studies) -7                       | Reports in the media on some of the interesting aspects relating to parties and contestants.   |
| (4) Five-Star Jails in India<br>(Mr. Joginder Singh) -12                    | The Former Director, CBI says politicians in some of the jails enjoy all the comforts of a home, making a mockery of their supposed incarceration  |

### **RIGHT TO INFORMATION**

- |  |   |
|--|---|
| Implementation Research Needed<br>(Dr. N. Bhaskar Rao) -14 | Reviewing the working of the RTI, the author concludes, with some hard facts, that there is an urgent need to undertake research on the whole gamut of the Act in the light of the two-year experience on the ground                |
| Ansari's Appointment<br>(Transparency Studies) -16         | On a petition seeking to view documents relating to the appointment of one of the Central Commissioners, the CIC left it to the Prime Minister's Office to decide the petition in the light of its earlier orders on similar issues |
| CIC Briefs -17   | Some Reports on CIC decisions and court interventions   |

**Editor: Ajit Bhattacharjea**

# CEC Protects Dalits Against Bahubalis

Putting this issue together has proved a fascinating learning experience. When it was being planned, we anticipated that the long-drawn-out Uttar Pradesh elections would generate plenty of reader-friendly material for Transparency Review. Interest would be focussed on the most serious ailment of our democratic system: the corrosive effect of money and criminalisation. Whether Chief Minister Mulayam Singh Yadav (so inappropriately named) survives or gives way to Mayawati (appropriately named) or less likely Rahul Gandhi (whose name is his fortune) seemed of less significance than whether the elaborate arrangements made by the Central Election Commission to protect the polls from the 'bahubalis' who have imposed their might on the electorate could be curbed. We were not disappointed, as we hope the reader will discover. One story to which we draw attention is of a Dalit village in the Ballia district of UP. Threatened by the presence of the CEC's forces, upper caste bahubalis were unable to prevent Dalit voters from voting for the first time since Independence.

The Centre for Media Studies has been trying to give transparency to the world of corruption and criminalisation for years. Detailed surveys of corruption-prone areas have unearthed shocking data. The figures are truly appalling, but they have failed to

shock perhaps because they are conveyed in dry, factual annual reports. Their significance has been better conveyed in the pages of the Hindustan Times financial associate, Mint. The CMS is currently engaged in planning another corruption survey that will take in the corruption of electoral politics, among other scandals.

Right to Information has been the heart of Transparency Review. since it was first published over a year ago. It will remain so. But we anticipated a problem. How long could reader-interest be cultivated by a series of stories on the merits of RTI? On disclosures of wrong-doing and misappropriation by intrepid applicants for opening of routine official files? We were happily proved wrong. RTI stories have made headlines almost every day. The Central Cabinet, we find, has been tasked by the Central Information Commission to reveal notings on the file concerning the choice of no less a dignitary than the Foreign Secretary, the most visible bureaucrat in the Government of India, at home and abroad. How can the Cabinet be asked to divulge such a top-level secret? The Government has appealed to the courts. We must wait for the courts to decide whether public interest is involved in the matter. You may have to wait for our next issue to discover the implications of the outcome.

## Letters To The Editor

Such analysis would positively enhance the effectiveness of the RTI Act. The single piece of legislation can reduce corruption levels substantially, if properly implemented.

**Pradip Baijal, Former Chairman TRAI**

Your issue on No Justice for Aam Sadmi is an excellent piece of your sincere and adventurous efforts. It is simply a superb Job.

**Pro. Madhubhushi Sridar, Hyderabad**

It is very enlightening that such issues can be discussed so openly.

**Prof. Ang Peng Hwa**

(Letters to the editor may be sent by email: [transparency@cmsindia.org](mailto:transparency@cmsindia.org), [info@cmsindis.org](mailto:info@cmsindis.org))

I have read with great interest your latest issue of TR.

**Rita Sinha, Secretary, CIC, New Delhi**

I find it very enriching

**Udsay Shankar, Asst. Prof., Raipur.**

The articles and information on shortcomings in the judicial system and decisions of Central Information Commission are very educative and informative.

**M.K. Khanna,  
Secretary,**

**Rajasthan Information Commission**

# MAYAWATI DEBUNKS MEDIA, MONEY & MUSCLE POWER

■ Dr. N. Bhakar Rao\*

**B**SP's Mayawati has demonstrated in the landmark Assembly UP polls how unconventional wisdom could sway voters in the days of hi-tech expensive campaigns. In the process certain myths like that media, money and muscle power determines a poll outcome were underscored.

While the other parties in UP were busy with media hype directly and indirectly, BSP was busy at the grassroots and, in fact, kept away from the news media. Mayawati did not care what the other contenders were arguing out in the television studios and in the newspaper pages. She also did not waste money on advertising and visibility in the news media. Rather, she had gone for localized and personalized campaign infusing confidence in cadres and motivating workers and appealing to those who were not known as BSP voters. That is how BSP was able to mobilize its voters when the overall turnout in all the seven phases was an all time low. Unlike other parties, Mayawati had no populist promises and she had no poll manifesto either to worry about media publicity. She kept the media at bay because she had no problem of disconnect with different sections of the people. In fact she showed how instant rapport could be built with those who were not part of her base until then.

She has also not wasted her time commissioning pre-poll surveys or exit polls and had not gone for so many animated discussions on surveys. All this enabled her to have a proactive campaign from the very outset. Mayawati seems to have realized early enough the folly of getting into the riddles of news media, their weightage and priorities. She understood the concerns of voters better, irrespective of their community. While BJP, SP and Congress were caught in one or more controversies of their own making during the campaign, BSP was too busy in voter mobilization work.

Of about Rs.700crores spent (as per CMS estimate) by political parties and their candidates

in the just concluded UP Assembly poll, BSP's share was the least, around ten percent. SP, on the other hand, spent four times more. BJP and Congress spent about 35 percent. This is despite Election Commission's initiatives to restrain expenditure. Mayawati had hardly spent on media publicity including television commercials, poll surveys and extravagant shows which together constitute nearly 40 percent of all poll campaign expenditure. Nor did BSP spend to procure votes. She also did not depend on State leaders from outside to campaign for her candidates as the other parties did. BSP cadres and leaders concentrated on their own pockets or constituencies.

In the UP Assembly poll, the campaign expenditure was higher than ever before mostly because of staggered seven-phased polls. In fact, what political parties had spent in this poll in UP was as much as what the Government's expenditure was for the general elections in the country. No wonder the Chief Election Commissioner was disappointed for "failure to curb excessive use of money and eliminate money power".

As to "muscle power" in the poll campaign, although BSP too had its share in deploying those having pending criminal cases as its candidates, a majority of its candidates were "new". One with a criminal background, on being elected, has been made a Minister. The composition of BSP candidates was such that it helped depolarize voters on communal lines. As many as 38 percent of all SP candidates were with criminal background, according UP Election Watch. In the final phase, 58 percent of SP candidates had such a background against 32 percent of BSP candidates. In fact, no party in this UP poll could keep away from those having a criminal background.

A couple of those candidates did their campaign from jail - including making threatening calls. A prominent SP candidate used cell phone from a jail in the neighboring State to address public meetings in the constituency - (and he has won!). UP Election Watch brought out before every

round of the poll "criminal background of candidates". "Vulnerability mapping" and the constituency-specific measures taken by the Election Commission to minimize voter intimidation and proxy voting have helped in ensuring relatively violence-free election despite the longest ever poll battle.

Nevertheless, in the ultimate analysis, if every party follows the course taken by BSP in this UP polls, the electoral process in India would be far more dispassionate and democratic. The elections would be much less caste and communal based and much less money-power driven and more concerned about basic issues of people.

{\*Dr. N. Bhaskara Rao is founder Chairman of independent Centre for Media Studies (CMS), Email: nbrao@cmsindia.org}

### Middle-Class Challenge

In Uttar Pradesh, where corruption and caste have long dominated politics, a group of professionals, from engineers to doctors, are trying to challenge the grip of traditional parties. The new party, led by a handful of middle-class youth educated in elite colleges, has almost no chance of winning the State election this month where party politics, strongly linked to caste identities and wealthy party machinery, are entrenched.

But the Bharat Punarnirman Dal (India Reconstruction Party - BPD) has given vent to a simmering despair in the middle class over rampant corruption and crime in Indian politics and frustration at problems not being solved.

"Just as we had the movement for independence and the green revolution for food security, we need a political revolution to clean up politics," said Omendra Pratap Singh, one of the founding members of the new party and a post-graduate from the Indian Institute of Technology (IIT) in Kanpur, one of the country's flagship engineering institutes.

In early successes, a professor and a doctor, supported by the party, won elections held to the legislative council of Andhra Pradesh in March. The party won 6.5 percent of votes in municipal polls held in India's financial hub of Mumbai,

(Courtesy: Reuters)

considered good by political parties for a start-up party.

But the real test will be Uttar Pradesh, where the BPD has eight candidates. In the past, attempts by professionals to enter politics have met with limited success. But this is the first time there has been an effort to create a national party of professionals." I wish them luck but they will have to address the day-to-day problems of the common man. Merely saying they are against crime and corruption is not going to help them," said independent political analyst Mahesh Rangarajan.

After passing out from IIT, Singh, 27, joined Tata Consultancy Services, a top IT firm, but left the job after a few months to launch the BPD. Singh is contesting from Kanpur, a bustling industrial city near the State Capital, Lucknow. "It is time for us educated people to enter politics. Today's politics is rampant with crime and corruption. We offer you a change," he said to businessmen in a market in Kanpur.

Some heads nodded as leaflets were handed out. "I want this party to rise but unless they too join the dirty politics, they will fail, 99 percent they will fail. They can't match the criminals and the corrupt in today's U.P. politics," said S.P. Singh, an apparel shop owner.

# SILENT REVOLUTION IN U.P.

■ Bibhu Mohapatra\*

**W**hile the results have confounded pollsters and political analysts and led to renewed debates on social engineering and caste arithmetic, much less attention has been paid to the consequences of a civil society-led movement for electoral reforms. This article is about a silent revolution of citizens, which has resulted in changing not only the language but the grammar of politics in the Hindi heartland.

Prior to UP, Assembly elections in West Bengal, Assam, Tamil Nadu, Pondicherry, Uttarakhand and Punjab had seen a downward trend in candidates with pending criminal cases contesting and winning. But UP was going to be the test case. Known for its deeply entrenched caste-based politics and overwhelming presence of MLAs with criminal charges pending against them, the State stood at the top of violent crimes and crime against SC and STs in India.

The ranking of the major political parties in terms of percentage of candidates with criminal cases was as follows-- SP (38%), BSP (32%), BJP+AD (29%), INC (22%) and RLD (14%). This is significant because, it shows the level of dependence of political parties on such candidates and their belief that having pending criminal cases adds to the winnability factor of such candidates.

The analysis of the final election results, however throws some surprises. There are 155 elected candidates (38.55%) who have pending criminal charges. Out of these 91(58.70%) are charged with such heinous crimes, which, if convicted, would fetch them more than five years of prison terms. While during the election it seemed that dependence of political parties in putting up such candidates reflected their desperation to win, the results showed a contrary trend. Among the losers with pending cases, SP 101/148 (68.24%), BJP has 83/101 (82.17%), BSP 60/128 (46.87%), Jan Morcha 23/23 (100%), LJP 17/17 (100%), NCP 8/8 (100%), RLD 33/37 (89.18%) and INC 78/87 (89.65%).

Another interesting aspect of the UP election was the role of money power. The Election Commission had made it very difficult for political parties to spend money on the usual buntings and processions. Observers were made to move in the constituency without the knowledge of the District Magistrate and those candidates who indulged in ostentatious spending were issued show-cause notices. The major avenue of spending seemed to have been advertisements in newspapers and electronic media. Except the BSP, all the major parties spent some money in advertising. In all there were 463 candidates who had declared assets worth more than Rs 1 Crore. Out of these 115 (24.83%) have won. And among these 115, 48 have pending criminal cases against them. V.M. Singh, of INC, (Puranpur) who happened to be the richest candidate of all (Rs. 374 crores of declared assets) and had five serious pending cases against him, has lost. Among the top richest candidates in the election, Congress had five candidates, of whom only one won.

Sheer money power does not work, nor does sheer muscle power. But V.M. Singh has proved that a combination of money and muscle certainly enhances the chances of winning by three folds. This is further borne out by an analysis of the winners of last five assembly elections in the country. This means dependence on money and muscle power still remains the criteria for considering winnability.

The experience of UP elections would not be complete without a word about the role of the EC. A bureaucracy, put up by the ruling party and known for its favoritism, tasted the wrath of EC when it removed the Chief Secretary and the DGP for attending a ruling party function. But the lower bureaucracy was still a tough nut to crack.

In Bundelkhand region, DMs of Banda, Hamirpur, Lalitpur, Mahoba and Etawa refused to disclose affidavits of candidates to the Election Watch members on the ground that no such order existed, or they were too busy to oblige a citizen's democratic rights. The standard procedure of

refusal was like this--- the DM upon hearing about the EC order would pass the order to the concerned ADM; the ADM would not be available in office; once he was found the normal comment was - "do you want to take our jobs? the EC is here for two months only, after that what will happen to us?". One articulate ADM, upon being pestered by an enthusiastic EW representative said,; *Loktantra gaya tel lene, hum yahan aapke naukri nahin kar rahein hain*. The complaints were systematically noted and forwarded to the EC. The next day, the bureaucrats woke up to a very people-friendly morning. They searched for the cell numbers of the Election Watch persons and politely asked them to come and collect the affidavits. *Complaint kyun kar te hain. Hum log to aapke sewa main lage hain*. After that in the rest of the six phases no DM dared to say no.

In Sonbhadra District, Raup Gaon, a village inhabited by about 500 Ghasi tribals, who used to earn their livelihood by manual labour, had been displaced from the Kanhar Dam project and now

occupy a patch of forestland near Robertsganj, the district headquarters. The village was in media glare following the death of 18 children due to hunger last year. Sonbhadra is a Naxal-infested area where the various groups had called for boycott of elections. During Election Watch meetings, the villagers said that despite their repeated pleas the district administration had not issued voter identity cards to them. A list of eligible voters was prepared and sent to the EC with the request that identity was part of their struggle for dignity and a voter card would go a long way in rehabilitating their faith in democracy. The elections were on, and it was not certain whether the EC would have time to look into this matter. On our next visit to the village, after 10 days, ecstatic villagers who were proudly displaying their voter cards surrounded us. Voter card was a matter of identity and dignity for them. After being kicked around for years, there was a permanent address, and no one could now prevent them from voting nor throw them out of the village.

(\*Bibhu Mohapatra is Coordinator, Association for Democratic Reforms.  
Email: bibhumohapatra@gmail.com)

### Dalits Vote For First Time

Sounds strange but it's true. About 50 Dalit families of a village in Uttar Pradesh exercised their franchise in the U.P. Assembly elections for the first time since independence.

About 100 of the 248 Dalit voters of Naoka Gaon under Reoti police circle, about 35 km from Ballia, cast their votes. According to District Magistrate Ranjan Kumar, the Dalits were never allowed to vote by the dominating Rajputs during previous elections for the Dwaba Assembly constituency. They could not also vote in the recently-held elections to the village panchayat, Kumar said.

The district administration had recently raided a fair price shop owner's house and recovered over  
(Courtesy: PTI)

150 ration cards issued to the Dalits. The Rajputs used to forcibly deposit these ration cards so that the Dalits could not cast their votes, police said.

This time, however, the administration had taken steps to ensure that the Dalits were not deprived of their right and arrested 12 members of the Thakur community including village pradhan Uma Shankar Singh as a precautionary measure. The large presence of the security forces in the village and their Commandant's assurance that no harm would come to them from the so-called upper castes even after the elections reassured the villagers who then turned up to vote, the first exercise of its kind in their lifetime.

# CRIME AND PUNISHMENT



## *Jail No Bar*

**A** rich crop of politicians with long criminal records are trying their luck. It simply does not matter to them if they are in jail or out of it. Here are some prize examples given by Times Now tv channel:

Mr. Ramchandra Yadav, Samajwadi Party MLA from Milkipur in Faizabad, faces charges of murder, rioting and has eight non-bailable warrants against him; and in one case the court has ordered attachment of his property.

Mitrasaen Yadav, BSP MP from Faizabad, who is lending a helping hand in campaigning for his party, a co-accused in a murder case, was given life imprisonment and was given presidential pardon; he faces charges of dacoity, cheating and rioting. Add to this the latest allegation against him of involvement in a human trafficking case.

Anand Sen a former MLA and a BSP hopeful, has 25 cases against him, including looting and dacoity and has four non-bailable warrants against him.

An Indian Express report gives some more nuggets. Amarmani Tripathi, the prime accused in poetess Madhumita Shukla murder case, recently addressed a public meeting in Lakshmipur Assembly segment of Mehrajganj district over a mobile phone from inside Dehradun jail. Abhay Singh, another politician with a criminal background, has fielded his wife Sarita Singh on Apna Dal ticket from Bikapur seat in Faizabad and conducted a meeting of the sector-in-charge inside the jail recently. National general secretary and Rashtriya Lok Dal (RLD) leader Munna Singh Chauhan has lodged a complaint against Abhay accusing him of giving threatening calls to voters from the jail. An accused in several murders, Abhay is lodged in Faizabad jail.

Jitendra Singh alias Babloo, who is the BSP candidate from Bikapur, is another don-turned-politician. He is said to have been constantly sending messages to voters and influential people of the constituency seeking support.

Then there is Mukhtar Ansari, who has a history of winning elections from inside the jail. Mukhtar

and his brother Afzal Ansari, an SP MP, have been regularly holding meeting of supporters in Gazipur jail. Following complaints from opponents, the EC directed Director General Prisons Mahavir Yadav to shift Mukhtar to another jail. He is now being shifted to Jhansi jail. Mukhtar is contesting from Mau while his brother Shigatulla Ansari is the SP candidate from Mohammadabad against BJP's Alka Rai. She is the wife of slain BJP leader Krishnanand Rai, in whose murder Mukhtar is the main accused.

Carrying a reward of Rs 5 lakhs on his head and nephew of dreaded don Brijesh Singh, Sushil Kumar Singh is the BSP candidate from Dhanapur seat in Chandauli district. Sushil, who was wanted in several cases, surrendered soon after filing his nomination papers and is lodged in Varanasi jail. Uday Bhan Doctor had lost his membership of the 14th Assembly after being convicted in a triple murder case. For the Gorakhpur City seat, Mayawati had given the ticket to Vinod Upadhyay, prime accused in a daylight murder in Hazratganj that happened in February.

It is the heady mix of crime and politics that keeps the symbiotic relationship growing, says NDTV in a report. Quoting a report prepared for the Allahabad High Court, the tv channel says the oldest criminal case dates back to 22years. And there are instances where the status of the case is unknown. The State Government has in fact admitted in its report that records of a number criminal cases against MPs and MLAs are missing.

One of the beneficiaries is Harishankar Tiwari, once a Congress MLA. Since 1997 he has been a Minister with the last five Chief Ministers. Some of the politicians mentioned in the report are accused of having had a hand in riots in Gorakhpur, Mau, Meerut's Kavita murder case and even the Manjunath murder. They run syndicates, conduct business without bothering about legalities and soon many of them will be knocking on the doors of the legislature.

## **‘Give This Criminal A Chance’**

Addressing an election meeting, CM Mulayam Singh Yadav admitted that Samajwadi Party candidate from the Ayodhya Assembly seat, Indra Pratap Tiwari alias Khabbu Tiwari, had a criminal past.

Mafia leader turned politician, Tiwari, has several cases of murder, attempt to murder, kidnapping and extortion against him. Tiwari, at present, is out on bail with all criminal cases against him pending in different courts.

At an election meeting in Faizabad, the SP chief defended his candidate Yadav and said, "Khabbu Tiwari is young and in this age everyone makes mistakes. But if people make him an MLA and vote in his favour, he will not make any more mistakes (Courtesy: *The Hindustan Times*)

or get involved in criminal activities in the future."

During the meeting, Yadav also asked Tiwari to apologise to the public and promise them that he would not do any "badmaashi" in the future. The SP chief even called Tiwari on to the dais and asked him to take an oath. He made Tiwari repeat the words: "I beg pardon from the public, from those whom and whose families I have harmed during the past. But if I become an MLA, I promise I will not repeat any of the activities".

Khabbu Tiwari began his political career as General Secretary of the Students' Union of a local college in Faizabad. He was named as the main accused in the murder of Muslim leader and Corporator Chan Nayyar Iqbal.

## **Dalits Vote Without Fear**



**F**or the first time in recent memory, Dalits in Kanpur city and Dehat voted without fear, courtesy heavy deployment of central paramilitary forces in the area by the Election Commission.

However, Dalits feared a backlash from the upper caste in the villages. They termed the peaceful elections as the silence before the storm. With the withdrawal of troops, the Dalits were feeling insecure and wanted forces to stay. Ruling out any fear factor, I G Kanpur zone Javeed Ahmed said, "No one should worry about any backlash, as we are keeping a strict watch in areas where backlash is expected. Our intelligence is upgraded and anyone who tries to disturb peace and harmony in the area would be dealt with an iron hand." According to SSP Alok Singh there had been no reports of clashes amongst the communities but the police were keeping a strict watch on disturbing elements in sensitive areas. In the constituencies of Chaubeypur, Derapur, Billhaur, Ghatampur and Sarsaul, Dalits came out in large numbers to vote. "I have voted for the first time in my life with my wife and son," said Dwarika Lal of Shishupur in Sarsaul. "Previously

(Courtesy: *The Indian Express*)

we were not allowed to move out of our house and the upper cast people used to cast our votes. This time too our voter identity cards and ration cards were submitted by the pradhan and his brother but due to the intervention of Election Commission officials, we got them back and exercised our right to vote," said Dwarika.

Action against the gram pradhan of Shishupur and his brother was taken when they confiscated the ration cards of villagers in order to deprive them of voting in the polls. In a raid by zonal magistrate at the house of gram pradhan 200 ration cards were recovered which were returned to the owners and the administration provided them security to cast their vote.

A gram pradhan in Ghatampur area said on condition of anonymity, "Dalits would have to pay for voting against our wish." He added, "If our candidates lose then it could be the start of a caste war in the villages."

Arjun, a Dalit BA student in Chaubeypur, said, "There is lot of political awareness amongst the Dalits, They are no more afraid of taking on the upper caste when it comes to power sharing. Especially in villages, Dalits have started demanding their share of respect from the upper castes."

## ***When A Minister Lost His Cool***

Shivpal Yadav ko gussa kyo ata hai? A low turnout of voters made Shivpal Yadav pretty jittery, forcing him to lose his cool at a number of places in the interiors of Jaswantnagar. Moving fast on the dusty roads in his air-conditioned Mitsubishi Pajero, he even threatened the polling staff at some places.

As the reports of low polling percentage in his constituency trickled in, Shivpal along with his supporters rushed to the booths and started putting pressure on the polling officials and CPMF jawans to permit his supporters to cast their vote. Shivpal had an argument with the CPMF jawans at Akbarpur polling booth. Shivpal wanted to enter the booth in his vehicle, his security in tow. But the jawans refused. Shivpal lost his cool and there were heated exchanges between him and the jawans. Soon supporters of the SP started gathering at the booth and raised slogans against the Election Commission. But the CPMF jawans remained unmoved. When the SP workers tried to force their way into the booth, some of the jawans aimed their guns on the workers. Finding themselves cornered, Shivpal and his supporters beat a hasty retreat.

Soon, the local police force along with the officials deputed by the Election Commission arrived at the booth and brought the situation under control. Shivpal and his supporters threat-

*(Courtesy: The Hindustan Times)*

ened that they would lodge an FIR against the CPMF officials for misbehaving with the voters.

Shivpal and his supporters then moved toward another booth located in Kharjauli village. But the CPMF officers along with jawans followed him there. "He is out to create disturbance in the area and we would not allow that to happen," said an additional commandant of the force.

At Kharjauli again, Shivpal had a tiff with the jawans and alleged that his supporters were beaten up. Remove the CPMF officers or be ready to face the consequences, he threatened. Soon officers of the local police joined him. A U.P. police officer told the Central force officials to allow the people to cast their vote. They were once again told that only genuine voters would be allowed.

Then Shivpal moved toward Hirapur village but was again stopped by the CPMF jawans at the booth. When the CPMF jawans followed him to Rajmau village, Shivpal gave up and along with his entourage returned to his native village Saifai.

"We cannot stop him from moving in the area since he is a candidate, but we would certainly not allow him to have his way," said an officer.

Later, Shivpal said his fight was against injustice. He alleged the Central forces were not allowing genuine voters to cast their vote. "They threatened me and chased my supporters, I will lodge a complaint with the EC," he said.

### **Criminal Charges Against Ministers**

There are at least nine Ministers in the Mayawati Cabinet who face major criminal charges, according to Election Watch, an NGO. One of them, Anand Sen Yadav, son of Mitrasen Yadav, the BSP MP who figured in the recently exposed human trafficking case, is in jail .

Another Minister is Badshah Singh, who faces a dozen criminal cases including murder, attempt to murder, extortion, kidnapping and rioting. He told an interviewer; "I have not a dozen but at least three dozen cases against me; sometimes one has to take the law into his hands when authorities

*(Courtesy: The Indian Express)*

take no action."

About half a dozen other new Ministers too are tainted but their offences are comparatively minor. Ironically, Mayawati's ride to power was due to her stress on teaching outlaws a lesson of their lives, but the party did not desist from fielding 131 such candidates in the election fray of whom as many as 63 have won the Assembly election. Election Watch says 33 of them are facing two or more criminal charges; some charged with murder, rape, attempt to murder and kidnapping.

## **Tainted MLAs Back In Fray**

Could politicians caught taking bribes on camera get a chance to stand for elections again? The answer, sadly, is yes.

Tainted Uttar Pradesh ministers Mehboob Ali and Anil Kumar Maurya - whose criminal background was exposed in a tv channel investigation in 2006 - are back in the fray in the Assembly elections. While Maurya is campaigning in full steam to retain the Rajgrah assembly seat for the BSP, former minister Mehboob Ali is wooing the masses for his Amroha seat.

"I want water for my area - both drinking water and for agricultural purposes. That's my only aim," says Maurya.

Ali, who had to resign last year after an investigation exposed his drug trafficking links, is hoping to come back to power this time on a Samajwadi Party ticket.

Ali sought Rs 20 lakh to get a drug consignment ferried from Lucknow to Delhi. Caught on camera accepting cash to carry the narcotics in his official car, Ali had to resign from Mulayam Singh's cabinet.

*(Courtesy: CNN-IBM)*

Back then, Samajwadi Party leaders had condemned Ali in strongest of words. "I can assure you that people of the State and country at large will not be disappointed by the action," SP leader Amar Singh said.

But a year later, all is forgotten and Mehboob Ali is back in business and so is Anil Kumar Maurya who, in the same investigation, admitted to being a hawala operator. "I know Hawala trade. You give Rs 2.5 cr in Delhi and we give you the same amount here," he had admitted.

But a year later, Maurya's tainted history has clearly been forgotten. "It doesn't make a difference. You keep on trying and it won't matter," says Maurya today.

While Maurya was more candid, Ali evaded camera and let his son do the talking. "Inshallah! He stands a 100 percent chance of winning the elections," says Ali's son Pervez.

Clearly criminal pasts have not stopped the respective parties from giving tickets to the tainted ministers - another indication of the rot that has set into UP's politics.

## **MPs Facing Criminal Charges**

Apart from a handful of MPs from States like Assam, Himachal Pradesh, J-K and Uttaranchal, who have no criminal charges against them, every other State has a few parliamentarians with criminal cases against them. This includes minor offences and even major crimes like murder, rape and dacoity.

Data prepared by the India chapter of Social Watch-which has former and sitting MPs Nilotpal Basu, Madhusudan Mistry, Pyari Mohan Mahapatra and Sandeep Dixit on its committee-shows that 125 of the 538 MPs have criminal cases pending against them.

While 62 of these MPs have been named in minor cases, mostly of a political nature, the rest have been booked for serious crimes that could lead to jail terms of five years or above.

Recently, a parliamentary committee had rejected

*(Courtesy: The Indian Express)*

the Election Commission's proposal to ban persons accused of serious criminal offences, and where the court is prime facie convinced about their involvement in the crime, from contesting elections till they are cleared of such charges.

The Social Watch data, tabulated from affidavits submitted by MPs to the EC and later to Parliament, also shows that all major political parties have members with criminal antecedents.

A detailed study on criminalisation and related aspects of the 14th Lok Sabha by the Public Affairs Centre, Bangalore, confirms that a quarter of the MPs have a criminal background. Among them, half of those with serious criminal cases against them were from UP, Bihar, Jharkhand and MP. Parliamentarians from Andhra Pradesh have the least number of criminal cases against them, just 7.2 per cent.

## Lawless MLAs Choke Progress

Since late 2005, Mukhtar Ansari has been confined to a jail-house in a ramshackle town, Ghazipur in Uttar Pradesh, accused of conspiracy to murder. That charge and 27 other criminal cases lodged against him over 19 years have done little to derail a long political career.

In 1996, months after being charged with firing an AK-47 at the local Police Commissioner, Ansari was voted a member of Uttar Pradesh Legislative Assembly. In 2002, while facing a charge of illegal arms possession, he was re-elected by a wide margin.

Now, the 40-year-old Ansari has sailed back into the Assembly, thanks to a potent mix of divisive politics and political largesse. His brother Afzal, locked up with him in the Ghazipur district jail, is a member of Parliament. Police accuse the brothers of master-minding the assassination of a political rival and five associates. Both deny all charges against them; neither has ever been convicted of a crime.

The Ansari brothers represent an extraordinary phenomenon in India's democracy. Even as the country strives to become a global economic force, its legislatures are crowded with alleged criminals. In office, they are frequently accused of enriching themselves or their backers, often through construction projects, as well as settling scores with rivals, sometimes violently.

In many parts of India such politics has produced a development paradox: politicians continue to lavish attention on new buildings and roads, but neglect less lucrative public services. As a result, critics say, those with the greatest power to carry out much-needed health and school programmes

*(Courtesy: Excerpts from an article by Peter Wonacott in the Wall Street Journal)*

have proved major obstacles to their implementation. The costs of these failures are stark. Despite the economy growing at 8% or more a year for the past three years, India is falling behind in several basic measures of human progress.

For some in insular India, criminal charges carry much less of a stigma than in other countries or even more mainstream parts of the country. Such charges may even be an asset, since tough characters can help bond together people of the same faith or caste, especially if that person is seen as one who will help resist bullying by other groups, says Rashid Alvi, a Congress Party MP from UP. "They will elect the hardcore criminals if they think it will teach a lesson to the other castes," says Alvi. "It's the idea of who cares if he's a rogue, he's our rogue."

For alleged criminals, political office is alluring: If they haven't been convicted, they can remain in office, even while in jail. And if convicted, politicians often manage to hold on to their jobs while an appeal is lodged. Which is a good way to buy time, since the country's justice system grinds so slowly that cases may not be heard for years. Meanwhile, police escorts deter their foes from trying to kill them.

Since candidates have been required to disclose criminal charges against them only since 2002, comparative figures with previous elections aren't available. But observers say the situation is worsening.

"It's demoralizing to the police that you not only have to protect these people, you have to salute them, too," says Prakash Singh, a retired chief of UP police.

# FIVE-STAR JAILS IN INDIA

■ Joginder Singh



**A**raid on Meerut Jail by the DIG of Agra Jail led to recovery and seizure of cell phones and other unauthorised and prohibited items. Then there

was a fight between the jail police and inmates of the high-security prison. It left six police officials and four inmates injured.

The DIG said, "It could not have happened without the connivance of jail officials. We had special instructions from the Home Department as Meerut Jail is known for its lawlessness. But we were shocked when a thousand-strong mob attacked us with sticks and stones. We were trapped and could only escape after we charged towards the gate."

The prisoners snatched away all the mobile phones and contraband recovered during the check that was ordered at the instance of the State Government. The DIG has accused the Superintendent of Meerut Jail of "inciting the jail inmates to attack us so that we could not find prohibited articles in the jail".

On the other hand, the Jail Superintendent has accused the DIG of demanding illegal gratification. Some staff has been suspended. The other form of corruption reported from the Meerut Jail included unauthorised sale of items at exorbitant prices. Cigarettes were being sold for Rs 20 per stick. It cost Rs 500 for a meal of choice. A local call could be made for Rs 20, an STD call cost Rs 100. The Meerut Jail, built to house 700 inmates, now has 1,850 prisoners.

A former Uttar Pradesh Minister, serving his sentence in Lucknow Jail for the murder of his mistress Madhumita Shukla, freely hosted a wedding anniversary bash for a co-accused in the murder case inside the jail premises. A sitting Minister when asked replied, "No one is born a criminal and the Samajwadi Party believes in transformation of criminals. You can't stop anyone from celebrating an occasion concerning him, his family or near and dear ones - within the

premises of the jail. As per my knowledge, there was no violation of the jail manual."

In 2004, three accused involved in the assassination of Punjab Chief Minister Beant Singh escaped scandalously from the Burail Jail in Chandigarh. Inspection of the jail showed that the high profile prisoners were not only leading a luxurious life, but they had also enclosed their cells in a way that their activities inside could not be kept under vigil. Once the cell was turned into a virtual fortress, the prisoners dug a tunnel to escape.

The escape of terrorists involved in one of the most high-profile assassinations could not have materialised simply through a nexus between corrupt jail staffers and the prisoners. Vast sums of money as well as a pattern of internal and external intimidation was necessary to create the conditions for the eventual breakout and a significant network of support was essential to make sure that the fugitives could evade the police system once they were out.

The escape of Phoolan Devi's killers from high security Tihar Jail and other similar escapes of prisoners highlight the ineptitude and complicity of jail staff. Tihar Jail is actually a complex of seven prisons, having a capacity of 4,000 prisoners. But actually there are more than 12,000 prisoners lodged there. Regrettably, there is no fixed rule as to how many prisoners can be lodged in a particular jail.

The following is the existing jail system. There are two categories of jails - district jails normally built for 400 prisoners each and central jails for 750 each. The jail staff members are not from the police and have their own distinct hierarchy. There are different categories of undertrial prisoners depending upon their education and social status. Courts have directed jails to do away with the colonial, vintage classification of undertrial prisoners into Class I, II and III, based on their socio-economic status, but Government continues to stick to the old practice.

Selected prisoners are used for the internal

management of jails - to make up for manpower shortage - as well as administrative work. The convict-supervisors become a link between the prisoners and jail officials. They are given an incentive for their work. Any wrong placement or selection can lead to the escape of prisoners or other crimes going unchecked inside the jails.

The Indira Gandhi Government had set up a high-powered panel in 1980 to propose prison reforms. The apparent cause was Mrs. Gandhi's first-hand experience of the conditions in Tihar where she was lodged in 1978. Mrs. Gandhi appointed the Justice A.N. Mulla Committee to review the national jail system even though jail is a State Government subject.

The Mulla Committee, 1983, recommended that the Constitution be amended to shift the subject of prisons from the State List to the Concurrent List. That never happened. The Centre at present has no say in the matter of jails except when they are in Union Territories where, again, jails are far from being models. The result is that jails continue to be governed by an outdated law enacted by the British in 1894. The position is that the jail conditions vary greatly from one State to another or even from prison to prison. There is no national policy on prisons.

A sensible recommendation of the Mulla Committee was to classify prisons into special security, maximum, medium and minimum security prisons. Such a classification can serve as a safeguard against jailbreaks and jail riots.

Much before sting operations became a norm with the media, a hard-hitting report had shown that in the Tihar Jail, officials mixed with notorious inmates like Charles Sobraj who ran an

extensive drug and liquor racket with impunity. This led to a secret visit of the then Home Minister Giani Zail Singh to Tihar Jail. He was stunned to see a drunken prisoner offering him a bottle of liquor. A mortified Government finally suspended two jail officials.

Criminalisation of politics has produced a strange phenomenon. Criminals have contested elections from behind the bars and some of them have won. Given such topsy-turvy world of politics, prison officials are often either unmindful of the crimes being committed regularly inside the prisons, or sometimes they are the ones to provide prisoners with mobile phones, drugs and food. These jail staffers also organise kavi sammelans and mushairas and help prisoners run extortion rackets and criminal gangs from inside the jails. A prison for some prisoners has become a home away from home.

The next issue is that of undertrials. According to the statistics compiled by the Custodial Justice Cell of the National Human Rights Commission, 225,817 of 304,893 or 74.06 per cent of the total prison population in the country comprises those awaiting trial. The total jail capacity in India is 232,412 prisoners, which makes the total prison population 31 per cent higher than capacity, clearly emphasising the urgent need for a speedier justice mechanism.

Only when politicians go to jail do they talk about reforming the jail system. They forget the issue the moment they are out. We must be clear as to what kind of confinement or jail system we want. The time to make a beginning is now before things get worse. There must be a Central law to be followed as a model by all States.

*(Mr. Joginder Singh, is a former Director of CBI)*

# *Right to Information*

## IMPLEMENTATION RESEARCH NEEDED

■ Dr. N. Bhaskara Rao

A quick look at the implementation of RTI so far conveys mixed messages. First the welcome part. Contrary to the initial disappointment (of some RTI activists) at the end of the first year of the Act, the second year has fared far better and, in fact, the role of the Central Information Commission in particular has been impressive and even enthused pessimists. Some State Information Commissions have done better in terms of invoking the powers of the Act. The disappointment has been particularly on three fronts. Firstly, the political leadership and the political parties by and large have done nothing so far to give a push to the Act as if doing so would adversely affect them. The other glaring aspect is that the Governments both at the Centre and in most States, have done little to create much needed awareness among large sections of the people and to help open an important window of the Act-suo motu obligations, maintenance of records, and management. Thirdly, the Information Commissions in the States have yet to demonstrate proactive initiatives.

As RTI is forging to complete its second year, it is time to take a look at who is availing of the Act, who is benefiting from it or at least trying to. In fact, from the next year (of RTI) we need to put more serious efforts to know precisely what difference the RTI Act has made to the people and its overall role in various specific contexts. Despite claims of massive training programmes for PIOs in the States, there is no evidence to suggest that these have made more people avail the Act or take any follow up action. A look at the way most training programmes are scheduled, organized and the final outcome hardly give a picture of seriousness and a strategic approach. The training programmes for those in the system entrusted with the responsibility of implementing the Act, not just the PIOs, need to be more structured.

Certain variations have been perceived in the implementation of the RTI Act among the States and we need to know the difference. For example, pros and cons of having Commissions all with retired bureaucrats, different application fees (it is Rs.50 in Haryana as against no fees for BPL card holders or only a symbolic amount for rural applicants in Andhra Pradesh). Perhaps one could say that it is too early to expect a decline in corruption affecting the citizens. The forthcoming India Corruption Study 2007 by CMS and TII, during the second half of 2007, could throw some light on this aspect.

The RTI Act is a means, not an end, for change, equity, activism, citizen participation and good governance. The better RTI is implemented, the better it is for everyone, including for those in the system-contrary to what they think. Their credibility and respect in the society will go up. Even more so for the news media as an institution and for the journalists individually. They can play a more proactive and positive role - irrespective of seniority in the profession, and increase their viewership / circulation.

A comprehensive review of the performance is unfortunately not possible since hardly a couple of States have come up so far with their annual reports which they are obligated to submit to their respective State Assemblies. Nevertheless, a quick analysis of applications filed under RTI Act indicates that applications (over 75 percent) have been (1) by men, as if women are out of reckoning (2) mostly by those in power or part of the system, and (3) by those in the metros (in fact most disappointing is that applications from villages were hardly around 10 percent - even in Andhra Pradesh where application fees is only half of what it is in the urban areas), (4) over 60 percent are for personal or individual reasons or advantage, (5) pertain to service matters, and (6) most of the applications are by the

same people. Most Commissions have no women Commissioners.

Equally disappointing is the lack of efforts by the Commission to reach out. For example in the case of one important State having multiple Information Commissioners and having a relatively better budget, about 40 percent of the departments having PIOs have not received any application in the year and in the case of another 50 percent of the departments under RTI Act, The number of applications received during the year for the entire State was hardly 10 percent. And the concentration was on just a couple of departments. This is despite claims that PIOs of all these departments were trained. The number of applications from women were, unbelievably, too few. This needs to be looked into.

Similarly, the activities of the Information Commissions and Commissioners. For example, tours of the Commissioners outside the State headquarters were mostly to meet officers, which is good but not good enough to sustain the tempo of a movement and enhance the scope of RTI work. Public interactions of Commissioners, other than the hearings in the Commission and formal official engagements, were too few. In fact, field visits are rare in the case of many.

All this brings out the urgency to take stock of the "who, what, where, when and how" aspects of usage of the RTI Act in different States. Only then would we be able to take quick corrective actions or interventions - by the Government, by the Commissions themselves and by the civil society groups. That would also help achieve better efficiencies of targeted programmes of the Government. We need to constantly know who or which sections of people are taking advantage of the RTI Act and who is benefiting more. Also, we need to know in more concrete terms the kind of difference campaigns of civil society groups in various parts of the country are making. And, of course, whether there has been any change in the mindset of people responsible for the implementation of both massive development schemes as well as the RTI Act. We need bottom lines now as to awareness levels, response by way of applications, redressal mechanisms, use of citizen charter, social audit, etc, so that two or three years from now we could know more reliably what difference the RTI Act has made to the people and who has benefited the most. We should chalk out a research agenda for this. Many independent professional agencies, like CMS, need to take on this task.

## Information-Seeker Beaten Up

President of the Punjabi Sabha Hemant Kinger was allegedly beaten up by contractors executing various development works in Panchkula near Chandigarh for stalling payments.

Kinger, in a statement to the police, alleged that he went to the office of the Municipal Council to know the status of information he had sought under the Right To Information Act.

"Inside, I saw one of the employees talking to seven or eight contractors. He asked me to sit in his room since he needed clarification on the information sought. He came in minutes, accompanied by the contractors," an injured Kinger said. He alleged the contractors bolted the room

*(Courtesy: The Tribune)*

and began hitting him. "They boxed me and kicked me till I managed to open the door and flee. The staff of the council, including the secretary, watched in silence. I called the police which rescued me."

He was taken for a medical examination and his statement recorded by the police. "A case will be registered once the report is known," police sources said. "I was apprehending trouble. I had repeatedly sought security from the police," Kinger said.

While nobody from the Municipal Council was available for comment, councillor R.K. Kakkar met the Deputy Commissioner and Superintendent of Police to register his protest against the attack.

# ANSARI'S APPOINTMENT

■ Transparency Studies

**W**hile reiterating its earlier decisions regarding disclosure of file notings to an applicant under the Right to Information Act, the Central Information Commission, in a case pertaining to the appointment of one of the Commissioners in the Commission, has left it to the Public Authority to come to a "reasoned decision" after examining whether the information can be withheld under the provisions of the RTI Act, as per its decision in a similar case.

In another case, in which a retired police officer, Mr Ravionder Kumar, had been denied file notings by the Home Ministry, the Commission had decided that the concerned information should be made available to the applicant unless it came in conflict with public interest including the preservation of confidentiality of sensitive information and were therefore excluded under any of the provisions of the Right to Information Act.

Last September, the appellant in the Commissioner's case, Mr Milap Choraria, had asked for copies of file notings of the entire file, with other related documents, pertaining to the selection process through which the Prof. M.M. Ansari was appointed Information Commissioner of the Central Information Commission. A month later, Mr Choraria was told by the PMO that the term "information" as defined in Section 2 (f) of the Act excluded 'file noting' but he could inspect the file and related documents other than the file noting. He then asked for copies of the document which could be given to him to which he got no reply.

In his appeal, Mr Choraria challenged the order but the appellate authority upheld the earlier order. Thereafter, he appealed to the CIC asking for complete information on the issue.

In its decision, the Commission noted that both the application and the subsequent appeal predated the clear directions of the Commission

announced on January 29 in another case in which it had dealt in detail with the question of file noting and concluded that "a citizen has the right seek information contained in 'file notings' unless the same relates to matters covered under Section 8 of the (Right to Information) Act." In fact the Commission recalled that similar views had been expressed by the Commission on four earlier occasions.

In the present case, the Commission directed that Mr Choraria's request for documents may be processed in terms of its earlier decision in a case concerning a request to inspect files, papers etc., relating to the appointment of the Chief Information Commissioner and Information Commissioners last September. It quoted the operative part of that decision which was as follows:

"The Appellate Authority, therefore, cannot withhold this information either, on the ground that the information is classified as "confidential" under the Official Secrets Act or under Section 8 (2) alone. However, Section 22 as described above only overrides anything inconsistent with the Right to Information Act, 2005. The Official Secrets Act, 1923 stands neither rescinded nor abrogated. While a public authority can classify any of these items of information as "confidential", thus limiting the discretion of any other authority, in this particular case denial of information is issued under the orders of the Public Authority and it is open to the Public Authority to deny the information provided such denial can be justified under Section 8 (1) of the Act. The Prime Minister's Office will, therefore, re-examine the matter in view of the Decision Notice and it may disclose the information to the appellant, unless of course the disclosure of the information can be denied or withheld under any of the provisions of the RTI Act. The Public Authority shall take an appropriate reasoned decision."

## **Court Stays Order in Sikri Case**

The Delhi High Court has stayed the order of the Central Information Commission asking the Government to place all documents from "initiation to culmination" in appointing Mr Shiv Shankar Menon, as Foreign Secretary, for its perusal. The stay came on a writ petition filed against the CIC order on behalf of the Government.

The CIC order was in pursuance of an application by a Secretary-rank officer Veena Sikri under the Right to Information Act (RTI) to seek answers to Menon's appointment. Sikri, one of the officers superseded by Menon, had also alleged gender bias in the Indian Foreign Service.



The CIC directed the External Affairs Ministry and the Prime Minister's Office to show to the Commission the relevant papers. But in a crisply-worded letter, the Cabinet Secretariat informed the CIC that it would file a writ petition in the High Court against the CIC order. Sikri said "By moving court, the Cabinet Secretariat is challenging the very core of the RTI Act. At the same

*(Courtesy: The Hindustan Times)*

time it is setting an unhealthy precedent. Under Section 18 of the Act, no public authority can deny or withhold any records from the CIC. The Cabinet Secretariat's stand is an attempt to render the RTI meaningless and toothless.

"It is ironic that the RTI Act is passed by the present government with the Cabinet Secretariat being the core authority for its approval. By moving court against it, it is challenging its own creation," Sikri said. A 1971 batch IFS officer, Sikri returned from Bangladesh in November last year, protesting against being superseded for the Foreign Secretary's post.

Earlier, in her letter to PM Manmohan Singh, Sikri had alleged gender bias stating: "I can only regretfully conclude that I have been discriminated against on grounds of being a woman. My supersession contradicts the stated objectives of the Government of India on promoting gender equality and enhancing the representation of women in the highest level of policy making".

## **Commission Confronts High Court**

In a crucial ruling on transparency in judicial functioning, the Central Information Commission has rejected Delhi High Court's contention that information on implementation of the Right to Information Act in the High Court is outside public purview and therefore not open to scrutiny.

The CIC acted on an appeal filed by Manish Khanna, an advocate in Tis Hazari courts who had sought to know, among other things, the reasons behind the delayed appointment of a Public Information Officer (PIO) in the High Court. He also sought details of officers or judges who had dealt with the matter with relevant dates, minutes, file notings and subsequent decisions made in this regard.

Holding that the "appointment of a PIO is indeed a matter of public interest," Chief Information Commissioner Wajahat Habibullah

*(Courtesy: The Times of India)*

observed: "The public has a right to know the procedure that went into PIO's appointment and matters that weighed with the Hon'ble Justices deliberating on the issue."

Accordingly, the High Court PIO, A K Mahajan, was directed to furnish the information sought within two weeks.

Khanna had come to CIC dissatisfied by three replies of the Delhi High Court which he found "vague". While the first two appeals, which were being heard by CIC, related to information on criminal cases pending for more than two years and on persons languishing in Tihar jail for 17 years respectively, the third appeal sought to know the reasons behind the delayed appointment of a PIO in HC and implementation of RTI Act in Court which happened "much beyond 120 days of its implementation".

## UPSC Challenges Court Order

The Union Public Service Commission has appealed to a Division Bench of the Delhi High Court against the order of a single-Judge upholding a Central Information Commission order, directing the UPSC to reveal the cut-off marks and also the model answer papers to IAS examination candidates in the preliminary tests of the Civil Services Examination.

Upholding an order of the Central Information Commission (CIC), Justice B. D. Ahmed had held that the disclosure "cannot harm the interest of the UPSC or any third party". The CIC approach was in the "correct perspective", the Court added.

The UPSC had submitted in the Court that if information on the marks scored by the candidates was given out, there was a distinct possibility of coaching institutes misusing it, and this would harm the interests of meritorious students. Also, its scaling system was very sensitive and so could not be revealed in an open court, the UPSC had contended. Terming the argument as unfounded, the *(Courtesy: The Indian Express and The Hindu)*

Court had said it would be impossible for coaching institutes to influence the examinations as "question papers would be different, candidates and their number and composition would be different."

Though the UPSC subsequently offered to provide information on the cut-off marks, the candidates were not satisfied. Their counsel demanded that the marks awarded according to the scaling system be also revealed. On April 4 the High Court reserved its orders on the UPSC petition challenging the CIC order. The candidates who fought the case, under the banner of Transparency Seekers, had welcomed the single-bench High Court order. "It is a big and historic win for the aggrieved candidates who have been fighting for justice for the past eight months," said one of them, Praveen Prakash.

Another candidate, Don Sunil, had then said: "The UPSC must adhere to the judgment and disclose the marks for our benefit because our career is at stake. It should not move the Supreme he Court."

## Court Stays Order in Judge's Case

The Delhi High Court has stayed an order of the Central Information Commission (CIC) directing the Centre to disclose the records relating to elevation of the erstwhile Acting Chief Justice of the Delhi High Court, Justice Vijender Jain, as Chief Justice of the Punjab and Haryana High Court last January.

The Commission had also directed the Centre to disclose the Supreme Court collegium's decision and the Union Law Ministry's recommendation to the Prime Minister sent finally to the President relating to Mr. Justice Jain's appointment.

Justice B. D. Ahmed of the High Court stayed the order on an appeal by the Centre.

Mr. Justice Ahmed also issued notices to the Centre and the person on whose application the Commission had passed the directions under the Right to Information Act (RTI).

The Centre submitted that the documents in question were classified, and therefore could not be made public as per the exemptions listed under *(Courtesy: The Hindu)*

Section 8 (1) (e) of the Right to Information Act.

The Commission headed by Wajahat Habibullah had in its order in March this year directed that the records be made available to Subhash Chander Agrawal who had sought them under the RTI Act.

The CIC order had come on an appeal by Mr. Agrawal against the order of the Chief Principal Information Officer (CPIO) of the Department of Justice of the Union Law Ministry, denying him the records on the ground that disclosure of such information would violate a "fiduciary relationship under Section 8(1)(e) of the RTI Act" because it was protected under the confidentiality clause.

President A. P. J. Abdul Kalam had returned the file relating to Mr. Justice Jain's appointment to the Prime Minister after certain reports had appeared in the media pertaining to a judgment delivered by him and had sought clarifications from the Government as well as the Supreme Court collegium.

## Case Shifted To CIC

The Karnataka Information Commission (KIC) on Monday transferred the case pertaining to denial of information to a visually-impaired girl by the Indian Institute of Management, Bangalore to the Central Information Commission.

State Chief Information Commissioner K.K. Misra also forwarded the request of Vaishnavi Kasturi, an IIM-B aspirant, to treat it as a subject that affects "life and liberty."

The KIC ruled that it had no jurisdiction over IIM-B as it was not "substantially funded or controlled" by the State Government. The IIM-B had argued that it was a Central institution and KIC had no jurisdiction over it. Though the case was transferred to CIC in New Delhi, KIC has forwarded a request asking the Central Commission to consider all the proceedings held so far to expedite the process of providing information.

RTI activist C.N. Kumar had noted in his (*Courtesy: The Deccan Herald*)

argument that in the absence of a clear definition of "substantially funded or controlled" in the RTI Act, 2005, the KIC should take note of the assistance extended by the State Government in setting up IIM-B. The Institute, he pointed out, had been granted 101.13 acres of land, development grant of Rs. 30 lakh and even exemption from paying property tax.

But Mr. Misra maintained that since the KIC had not come across any other legislation or authority that defines "substantially funded" it would adopt the definition as per Section 14 (1) of the Comptroller and Auditor General's (Duties, Powers, and Conditions of Services) Act.

Under this Act, anybody or authority which has received loan or grant of at least Rs. 25 lakh in a financial year and meets 75 per cent of the expenditure is deemed to have been substantially funded.

## RTI Convention

At a two-day 'National Convention of Right to Information Crusaders' held recently in Pune, representatives from 23 States sounded upbeat about the momentous law, but warned that a lot more needed to be done to make it effective.

'It's almost two years since it was passed. We have an active national (Internet-based) Hum Janenge network. We need to learn from each other's experiments. We need more intense discussions (to work out a strategy to make the law work better),' said Arvind Kejriwal, Magsaysay Award winner

Others present were Aruna Roy, Supreme Court lawyer Prashant Bhushan, social activist Medha Patkar, and over a hundred others.

There 'were still a number of enemies of the law' who didn't want transparency in governance to happen, Roy added. "The enemies are temporarily silent. But they are still around" she said, warning

(*Courtesy: The Indian Express*)

that there were efforts to amend the law.

Prashant Bhushan argued that the law could be judged in terms of how many institutions it covered, the few exceptions it left uncovered, the stringency of penalty provisions for non-compliance, and how independent the appellate authority was. On all grounds, India's law had fared fairly well, but the implementation needed to be tightened up and made more people-friendly, he suggested.

Campaigners from Jammu and Kashmir stressed the need to extend the law to their State to curb corruption, which they said was a serious issue there.

Four issues were focussed-expectations from the government, expectations from the Information Commissions, the need of government bodies to suo motu declare information about their functioning under the Act, and the need to create national-level RTI helplines and a common platform.

## Exporter's Plea Accepted

The Central Information Commission (CIC) has directed the Ministry of External Affairs (MEA) to disclose information about an intelligence inquiry against an Indian exporter, V N Thakur but on a submission by the Ministry agreed to peruse the relevant documents before deciding whether the appellant could be shown the papers.

Earlier, the MEA had been asked to furnish details of correspondence between the Department of Revenue Intelligence (DRI) and the Indian Embassy in Moscow on the basis of which an inquiry was instituted against the exporter.

Thakur filed an application with the Public Information Officer in the MEA, wherein he stated that on the basis of certain unsubstantiated and contradictory information from the Indian embassy in Moscow, the DRI had taken penal action against him in India.

In order to clear his name, the exporter requested a photocopy of the letter written by the Russian customs authorities to the Indian Embassy in Moscow.

Not satisfied with the information supplied by the Chief Public Information Officer and the appellate authority, the appellant filed a second appeal with the CIC in March.

*(Courtesy: The Indian Express)*

Information Commissioner O.P. Kejriwal said "from the two letters presented before the Commission, the stand taken by the MEA seems to be self-contradictory and hence the Commission feels that there may be a case of corruption involved in the whole issue".

Though the DRI is outside the purview of the RTI Act as it is an intelligence organisation, the Commission took recourse to Section 2 A (1) of the Act which provides that information pertaining to the allegations of corruption and human rights violations shall not be excluded even in case of intelligence and security organisations.

"Since the present case falls under the category where corruption is suspected, the record should be made available to the appellant even though the information relates to correspondence between an intelligence organisation and the government," the Commission said.

However, on a submission from the MEA, the Commission agreed that the documents, including the correspondence with Russian Customs, may be placed before the Commission itself in the first instance, which may take a decision on whether this could be disclosed to the appellant.

## CIC's Decision on Bourses Welcomed

The Central Information Commission's (CIS) decision to bring stock exchanges within the purview of RTI Act will keep the bourses on high alert and ensure that necessary information is made available to public in cases of manipulation by operators, feel experts. "The RTI Act will ensure that stock exchanges reveal information to investors on suspected cases of manipulation," investment consultant Prime Database's Managing Director Prithvi Haldea said.

However, he added, the decision of the CIC would not cut much ice as enough transparency is available in working of the stock exchanges since their corporatisation. "The stock exchanges are no more fiefdoms of brokers and manipulators",

*(Courtesy: The Hindustan Times)*

Haldea said adding they are monitored by market regulator Securities and Exchange Board of India (SEBI) on a daily basis.

The CIC order, said Diljeet Titus, Senior partner of the corporate law firm Titus and Co, "will keep stock exchanges on high alert and ensure that they remain vigilant and transparent. "The decision, he added, would open yet another window of investors to seek information from the stock exchanges and pursue legitimate interests.

The CIC in its recent order, overruling the objections of the Finance Ministry and National Stock Exchange (NSE), held that bourses being "quasi-government body" are public authorities and hence would come within the purview of the Right to Information Act.

# Rajasthan High Court Stays Order

■ Transparency Studies

The Rajasthan High Court has stayed the order of the State Chief Information Commissioner, Mr M.D. Kaurani, asking two subordinate court officers to provide information asked for by an applicant under the RTI Act.

The appellant, Mr Ajay Kumar Jain, contended before the Information Commission that both the officers, the Chief Judicial Magistrate and the Appellate Authority, the District and Sessions Judge, Jaipur had declined to give the information he had sought from the respective courts on the ground that until such time as the High Court framed its own rules, no information could be provided.

Mr Jain had applied to the Chief Judicial Magistrate for a copy of the attendance register of the presiding officer and Additional District and Sessions Judge, Jaipur City. In his second application he sought information under Section 4 of the RTI Act. In both the cases he was not given the information sought and his appeal to the Appellate Authority of the Court was dismissed on the same plea given by the Chief Judicial Magistrate, that the

the provisions of the Act. And the District Courts being subordinate courts were duty-bound to follow the Rules framed. In the absence of the Rules the District Courts were handicapped in complying with the provisions of the Act. Mr Jain argued that the failure of the Competent Authority (to frame Rules) could not be a ground for keeping his application pending.

The State CIC, Mr Kaurani said that the Right to Information Act had been enacted to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities.

The Act provided that the Rules to be framed by the Competent Authority (the High Court in this case) pertain to the cost of medium or print cost price of the material, the fee payable with the application and the fee payable for the cost of the copies to be provided to the citizens. The Act said that the Competent Authority "may make rules", not that it must frame the rules.

The very fact that the State Government had

## Media Ignoring 700 Million People

"There is nobody so marginal in a government as the minister of Panchayati Raj. I count for nothing. Nothing! When I was the Minister of Petroleum, I used to walk surrounded by the media. I kept on telling them that petrol prices can do only three things-go up, go down or remain where they are. And it was all over the place. But try and get them to write two words about the 700 million Indians-absolutely impossible.

*(Courtesy: The Indian Express, quoting Mani Shankar Iyer's lament at a CII meeting)*

And now with terrestrial television it is even worse. You have to be quarrelling with your mother-in-law or hitting your daughter-in-law to be able to hit the headlines. It is impossible to get particularly the pink papers to focus on issues that affect the bulk of the people. And it is so easy to get them to focus on issues that are of high relevance to only one or two per cent of the people."

High Court was yet to frame the relevant rules and until such time as these were framed his application would remain pending.

When the matter came up before the State Information Commission, the Chief Judicial Magistrate said that under the scheme of the Act, the High Court had been categorized as a Competent Authority. The Act provided that the Competent Authority may make Rules to carry out

already notified Rules on the same subjects indicated that the PIOs working under the High Court could carry on providing information under RTI. The net result of keeping the application pending is denial of information. admitting the appeals the State Chief Information Commissioner directed the PIO of the Court to decide the applications as per law following the Rules framed by the State Government.

## **A CIC With a Difference**

■ Transparency Studies

A bureaucrat all his life, one would have expected Mr Dhirendra Nath Padhi, Orissa's Chief Information Commissioner to carry his past tag and approach all RTI applications in the same pedantic way. Far from it. In fact, Mr Padhi has shown during his short tenure of about an year that he was no push-over and that he would act independently without bothering about who got affected by the decisions of the two-member Commission he heads.

Talking to Transparency Studies during his recent visit to the CMS, the Commissioner explained how he found his role now no different from what he had been doing earlier: "I used to follow the rules strictly then, and now I am scrupulously adhering to the RTI Act."



Of interesting cases, he mentioned one which related to a PIO of a department, who had been fined Rs25,000 by the Commission for his act of mission but chose to appeal to the High Court against the order. The Court first granted a stay before it adjourned for the vacation but after resumption of the case decided that it had no jurisdiction to entertain the appeal. This is perhaps the first instance of a such a heavy fine being imposed on a PIO.

The Commission also decided in favour of an applicant who sought information from a private power distribution company which refused to give it on the ground

that it was not covered by the RTI Act. The Commission ruled that it was "substantially funded" by the government since its majority holdings were with the Government and hence was covered under the RTI Act.

Orissa also faced a situation similar to most other States-about 70% of the applications or cases under RTI concerned personnel matters, transfers, postings and promotion of those working in the Government. But that had not prevented the two-member Commission from taking suo motu cases of public interest.

The appointment of Mr Padhi to the post of Chief Information Commissioner itself came about in an interesting way. During a meeting between the State Chief Minister and the leader of the Opposition to choose the State CIC, there was no agreement on anyone of the various names of officials and others in public life proposed for the post. This was not unexpected since the Chief Minister and the Opposition leader are known to disagree on almost every issue. Finally, the name of Mr Padhi cropped up and to nobody's surprise there was instant agreement, since the former Union Power Secretary enjoyed a reputation of being a no-nonsense person, who could not be bent or cajoled by any politician. And from his record in the Commission, he has not belied anyone's expectation.

# Haryana's Performance

## ■ Transparency Studies

Haryana, though one of the smallest States in the country, can claim to be quite efficient as far as the working of the State Information Commission is concerned. As G. Madhavan, the State Chief Information Commissioner, said in an interview on a recent visit to the Centre for Media Studies, the Commission, which started working only in June last after all the logistics were in place, managed to decide 489 appeals, while disposing off as many as 821 applications by advising the applicants suitably. Contrast this with one of its neighbouring States which had, unlike Haryana's two-member team, 11 members but not yet been allotted proper accommodation or even a separate budget allocation.

Mr. Madhavan, who is quite familiar with the State, having served as its Chief Secretary earlier, says the two Commissioners have divided their work so that the task becomes easier and speedier. They have been visiting districts, meeting officials, holding meetings with the local people and attending seminars to propagate the Act and the benefits that could accrue to the people. Sadly, the State Government has not so far shown equal enthusiasm to educate the people about the Act or even take the provisions of the Act seriously. The lackadaisical attitude of the bureaucrats, a malady common to all the States, has afflicted this State too.



Consequently, a large number of appeals are urban-centric and mainly relate to the departments of Urban Development, Irrigation, Power and Land Revenue. Issues, which could be termed as concerning the larger interests of the public account for about ten per cent, says the State Chief Information Commissioner.

There were two other issues, which needed to be highlighted about the State. One is obviously the attitude of the bureaucracy towards the RTI. How could one expect them to take the Act seriously when the Chief Minister himself declared sometime ago, in a public speech reported in the media, that the Act acted as an impediment to development?

The second issue concerns appointing Public Information Officers and Appellate Authorities. While the State Government departments and public sector undertakings have all filled these positions, the High Court is still to do the needful. The State Information Commission was made aware of it when it took up an application by a Chief Judicial Magistrate who wanted some information from the High Court PIO but was told that there was no such authority there. The Information Commission has reminded the Court Registrar about the relevant provisions of the RTI but has been informally told that the High Court was consulting other High Courts in the matter.