

Report on

And

Recommendations of the

Fourth Annual Convention

Organized by

The

Central Information

Commission

12-13th October 2009

The fourth Annual Convention of the Central Information Commission was held on 12-13th October 2009 at DRDO Bhawan, New Delhi. Her Excellency Ms. Pratibha Devisingh Patil, President of India inaugurated the Convention on 12th October, 2009. Shri Prithviraj Chavan, Hon'ble Minister of State for Personnel, Pension, and Public Grievances, Lord Meghnad Desai, Shri Shantanu Consul, Secretary, Department of Personnel & Training and large number of other dignitaries were present in the inaugural session.

Shri Wajahat Habibullah, Chief Information Commissioner, Central Information Commission welcomed the Hon'ble President of India. All Central Information Commissioners of the Central Information Commission attended the Convention (Annexure 1).

2. State Chief Information Commissioners (17), 47 State Information Commissioners and 5 Secretaries of the State Information Commissions also attended the Convention (Annexure 2).

3. The Convention was also attended by delegates from Sri Lanka and Maldives (Annexure 3).

Inaugural Session: -

4. **Shri Wajahat Habibullah, Chief Information Commissioner**, while welcoming the President of India and the distinguished delegates, underscored the need of inclusive growth. In his welcome address, Shri Habibullah quoted from the speech of Hon'ble Prime Minister of India in Parliament wherein he stated that the passage of the Right to Information bill would bring about an era which will bring the common man's concern to the heart of all processes of Governance. He also referred to the famous judgement of Mathew J. in the case of State of U.P. Vs Raj Narayan, which reads, "*In a government of responsibility like ours, where all agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries.... to cover with a veil of secrecy the common routine business, is not in the interest of public*". Shri Habibullah observed that proactive disclosures on various counts by each of the public authorities could be the vital strategy for success of Right to Information Act. He commented upon the

responsibilities of public authorities and observations of the Commission in this regard. He further observed that Right to Information Act is essential for the implementation of the e-governance programme of the Government. The Chief Information Commissioner emphasized the standardization of the procedures across the Government functioning. In his concluding remarks Shri Habibullah hoped that deliberations of this Convention would enable the stakeholders to evolve strategically sound, legally tenable and yet pragmatic standards in this direction.

5. **HE Smt Pratibha Devisingh Patil, the President of India** in her inaugural address began with an observation that on this day in 2005, landmark legislation of the Right to Information Act came into effect giving to the people of India a powerful instrument for their empowerment. The Act has, in a manner of speaking, now created a virtual “Parliament of the People”, where every citizen, through a simple method, can seek information from public authorities; and expect a response in 30 days. She observed that the interaction between the citizens and the public authorities is important in making democracy participatory and to move forward towards the common national goals of progress and prosperity. The President of India took note of the fact that public authorities are progressively becoming proactive in accordance with the spirit behind the Act and responding favourably. She mentioned that since the Act came into being a large number of Government websites invariably have the “Right to Information button” on them. It is important that technology is used for better management of records and data; this in turn would make information sharing easier. She, however, also emphasized that there is a fine balance which needs to be maintained between applications under the Right to Information to public authorities and also ensuring that public authorities are not flooded with applications, some of them of frivolous in nature, which could overwhelm their ability to respond in time. She observed that there is a need for a sense of responsibility for more openness on the part of public authorities as also within civil society to ensure that applications, which reach authorities, are those that genuinely need immediate attention. She concluded by reiterating the importance of sound principles of good governance for the welfare of citizens, who are at the centre of all government functioning. This will further strengthen our democratic traditions and credentials.

6. In his address **Minister of State for Personnel and Public Grievances, Shri Prithviraj Chavan** observed that it would be worthwhile taking stock of the experiences of the last four years as the Government contemplates further strengthening of the Act to bring in even greater transparency in Government. He noted that in the first four years of this law different stakeholders like the Information Seekers, Civil Society, Media, Information Commissioners and the Information Providers have ably supported the Government. This has helped achieve the aim of the Government to inculcate a culture of transparency and accountability in the working of every public authority and to secure access to information for all its citizens. Shri Chavan informed the gathering that last year the Government launched a centrally sponsored Plan scheme to strengthen the working of the State Information Commissions. The plan involved capacity building of various stakeholders, propagating RTI, making interventions in the curriculum of the education system and setting up a Knowledge Resource Centre for RTI. The Planning Commission has further given an 'in-principle' approval for extending the scheme to cover IT interventions/E-governance for RTI which would address the issues on both the demand and supply side through the use of technology. This will also help us in extending awareness to the remotest parts of the country. The further initiative under active consideration of the government is a new policy for "Data sharing and accessibility". A large amount of scientific, technical and economic data is generated with public funds. The policy will encourage the data to be prepared in standardised digital form so that all non-sensitive data can be easily shared for legitimate use. In his concluding remarks Shri Chavan noted that during the last four years, it has been the endeavour of the Government to proactively try and remove difficulties in the implementation of the act without taking recourse to legislative amendments.

Keynote Address: -

7. **Lord Meghnad Desai** while delivering the keynote address made a remark that when the Constituent Assembly decided that India was to be a full fledged democracy with universal adult franchise, the framers of the Constitution unleashed a revolution whose effects are being felt even now. To have empowered millions of men and women whose memories were of highhanded rule by local and foreign princes and potentates, to have allowed them the right to determine who will govern

them and to hold these governors to account every five years were freedoms unknown in India's history. He noted that the RTI Act has to be seen as a further step in that direction. The traditional "mai-baap" ideal of Indian Kingship does not permit questioning from below. The paternalistic attitude that the rulers know best and the ruled ought to just take it on the chin is hard to change. The political leader, and senior bureaucrats at all the echelons below him down to the Chaprasi gets used to the idea that they are above and the citizens are below. While tracing the evolution of such an Act, he noted that it is in this process of public discussion and dialogue that RTI has to figure prominently. It is not so much a freedom of information as the Right of access to information. The movement to empower citizens by some form of RTI has been around since 1766 when Sweden began the process and what was a trickle has now become a stream though not yet a flood. Finland (1951), USA (1966), Norway and Denmark (1970), France (1978), Netherlands (1978/1993) have set the pace. The British tradition has been much more secretive. The ruling idea of Britain has been that of a Constitutional Monarchy, with the sovereignty of Crown in Parliament rather than that of the sovereignty of citizens. Even as Parliament broadened the franchise on which it was elected, the idea that it held was that it is Parliament, which is sovereign, and not the people. In such a democracy, it was inevitable that Parliament was jealous of its privileges and took the view that its own guardianship of people's liberties was sufficient. This attitude has been challenged in the UK over the last fifty years. It is as a result of the many political movements of trade unionists, dissident political groups, think tanks and concerned citizens that a breach has finally been made in this culture. Open Government has now arrived. The UK passed its Freedom of Information Act in 2000. India has inherited the same culture of top down, 'leader knows best' attitudes. Here again the many movements of citizens have made the breach and RTI has arrived.

8. Lord Desai, however, felt that there is yet a need to inculcate an active practice of openness rather than the reluctant response to persistent inquiries for information. It is difficult for the governors not to be possessive about what information they have. But as in the case of tax revenue, so it is in the case of information. What the Government has belongs in the first place to the people. The Government must look after what the citizens have passed on to them but be also ready to display

transparently what it is doing with the precious asset. He was of the opinion that in the best of circumstances, the citizen should not have to ask for information. It should be always available and open to access. We can now safely assume that Internet access is not beyond the reach of most citizens. The provider of information should anticipate the needs of the demander for information. If much information were to be routinely accessible, then only the more esoteric items would require a formal submission. Lord Desai concluded by saying that difficult though this may seem, one only has to look back and remember how many people thought that democracy would be unworkable in a vast multi-faith, multi-ethnic nation that India is. But the truth about India is that it is capable of the impossible and the reason for that is the quality of its citizenry.

Technical Session 1

9. Prof. M.M. Ansari, Central Information Commissioner chaired the first technical session on '**Current assessment of Implementation of RTI**'. The other panelists in this session were Shri C.D. Arha, State Chief Information Commissioner, Andhra Pradesh, Dr. S.K. Sarkar, JS (AT&A), DoPT, Govt. of India and Shri Shekhar Singh of National Campaign for People's Right to Information.

10. The Chairman introduced the panellists and the theme of the session. In his address **Prof. Ansari, Central Information Commissioner** noted that the people are effectively using the RTI in getting information about sanction and disbursement of old age pensions in rural/urban areas and other services. He further, stated that we also see that there has been unprecedented transparency in the functioning of these departments of the Government. Prof. Ansari stated that Information Commissions have been recommending the appropriate governments ways and means for effective implementation of RTI Act under Section 25 of the RTI Act for the last 4 years.

11. Shri C.D. Arha, State Chief Information Commissioner, Andhra Pradesh presented the **brief findings of the sub-committee constituted** by the Chief Information Commissioner, Central Information Commission to undertake an in-depth study and analysis of the problems and issues raised during Annual Convention 2008 and to explore ways and measures for strengthening the

information regime. He presented the summary of the findings of the sub committee on six Terms of References (TOR) for the sub committee.

12. One of the salient features of the findings and the recommendations observed that the RTI Act has not in any way really dented the right to individual privacy of citizens because there had not been any explicit statutory protection enjoyed by Indian citizens as far as individual privacy is concerned before the enactment of the 'RTI Act, 2005. It further observed that even though RTI cannot be said to be antithetical to right to privacy, yet it would be perhaps apt to have a dedicated act that protects individual privacy in all its manifestations and in view of the recent technological advances. Yet another observation of the sub-committee was that although there have been definite attempts of mass awareness campaigns in the rural areas, the extent to which this has been done so far is not sufficient to cover the entire rural populace. Therefore, PAs in rural areas have to undertake sufficient mass awareness campaigns to educate rural poor and specifically, women organizations and SHGs – including inter alia on what questions could / should be asked. The sub- committee further found that Information technology has played a significant role in shortening the path to information sharing. It has eased the way to access information, and provided a wider outreach as far as government information is concerned. However, there are still avenues to be reached and information to be updated periodically in a dynamic manner. Shri Arha concluded by presenting some more recommendations on best practices in implementation of RTI Act to promote open Government and to outline an action plan for adoption/adaptation by public authorities. Finally, Dr. Arha informed that National Federation of Information Commissions of India (NFICI) was registered on 1st September 2009.

13. Dr. S.K. Sarkar made a power-point presentation on 'RTI implementation in India today: Government's Assessment'. He mentioned that the Government of India recognizes the need to remove the constraints in early implementation of Right to Information Act and is keen to ensure that intended benefits out of Right to Information regime reach the citizens quickly. He introduced the objective of independent studies stating, "*To proactively identify the factors constraining the implementation of RTI Act and suggest remedial measures in order to ensure the*

intended benefits of the act are delivered to the citizens". He presented some of the key findings of the study regarding RTI Awareness, Convenience of filing requests, Efficiencies at Information Commission, Enhanced Accountability and Clarity in role at Government level and Common Infrastructure and Capacity Building. Dr Sarkar presented the overview of some of the recommendations and the Government's response. He emphasized on the desired ways and means, as emerging from the study regarding the RTI Awareness. The study brought about a need to establish the RTI as a "Brand" through a mass awareness campaign. The study advocated for taking care of linguistic diverse needs and local relevance. He further shared with the gathering the outcome of the study on improving convenience in filing requests, improving efficiencies at Information Commission and enhanced accountability and clarity in role at government level. He explained in great detail the ways to improve convenience in filing requests as recommended by the study. He stated that the study has recommended that the Community Service Centres (CSC) be nominated as APIOs and act as single window for collecting applications for information. He concluded by stating that there is a need of creating RTI Implementation Cell headed by a senior officer at the State and Central level, creating Public Authority's RTI Cell (PARTI Cell) at Public Authority level and need of creating Knowledge Resource Centre which will be responsible for Knowledge Management, as recommended by the study.

14. **Shri Shekhar Singh** presented a report on 'The People's RTI Assessment 2008'; on behalf of Right to Information Assessment and Analysis Group (RaaG) and National Campaign for People's Right to Information (NCPRI). Shri Singh mentioned that the findings are the outcome of a broad based survey comprising of sample districts from 10 states. His presentation revealed that nearly 65% of the randomly selected respondents stated that access to information would help solve basic problems. Over 40% of urban and fewer than 20% of rural respondents knew about the Right to Information Act. It also revealed that 35% of the source of awareness in rural areas was newspapers followed by television and radio, friends and relatives, each 10% and NGO's 5%. In the urban areas, however, source of awareness were the newspaper in 30% of the cases, NGOs 25%, television 20% and friends and relatives 10% and over 90% of the rural applicants and 85% of the urban applicants were males. The social profile of the applicants in rural areas were tribal's

(9%), Schedule Castes (22%), other backward castes (24%) and others (45%); whereas in urban areas the social profile followed a trend of tribal's (15%), Schedule Castes (8%), other backward castes (23%) and others (54%).

15. **Shri Singh** also discussed the problems being faced by applicants in filing RTI applications. According to study report over 40% rural and 15% urban applicant faced harassments. He observed that it was difficult to get addresses of Public Information Officers at district and below levels. Shri Singh also presented the impact of the RTI on Public Authorities. His findings revealed that over 20% of the rural and 45% of the urban Public Information Officers claimed that changes have taken place in the functioning of their offices because of RTI and over 60% of these changes were relating to improvement in record maintenance. He further observed that according to 10% of the rural Public Authorities and 25% urban Public Authorities resultant changes were in the area of procedural functioning and decision-making. The report also revealed that there were great variation in handling identical RTI applications by both, Public Information Officers and First Appellate Authorities. His findings also captured the difficulty faced by the Public Information Officers. In this regard the findings revealed that over 30% of the Public Information Officers admitted that they did not know about the provisions of the RTI Act; and while large number of urban Public Information Officers, however claimed that they knew the provisions of RTI Act quite well, nearly 60% of the rural as well as urban Public Information Officers stated that they have not been trained.

Technical Session 2: -

16. The Second Technical Session on “**Proactive Disclosure under RTI Act – Problems and Perspectives**” was chaired by Ms. Medha Patkar. The other panelists of this session were Prof. M.M. Ansari, Central Information Commissioner and Shri Pankaj K.P. Shreyaskar, Joint Registrar, CIC, Shri Shailesh Gandhi, Central Information Commissioner, Shri Niten Chandra, Director, Ministry of Rural Development and Shri Jairaj Pathak, Municipal Commissioner, Municipal Corporation of Greater Mumbai.

17. In her preliminary remarks, **Ms. Medha Patkar** observed that without understanding the larger context of RTI Act not only the Good Governance but also the deepening of democracy would not be possible. Drawing upon her personal

experiences, she mentioned that if we limit ourselves to right to know and right to knowledge without any further right to decide and right to plan, nothing is likely to change within the present democratic framework. This will certainly be important if we really want to achieve participatory and direct democracy, as we all believe in. While introducing the theme, she referred Lord Desai's keynote address on Brahminic traditions of withholding the knowledge in spite of modern and post-modern technologies. She noted further that the Government, the State, itself, which is omnipotent, must itself try and be more and more transparent; but this will not be possible merely with replies of the demands, but by accepting the demands that are emerging from the civil society organizations and alike. This concerns about both macro and micro-level projects of the state. Ms. Medha Patkar noted that there are number of macro-level agreements, contracts, projects, decisions, acts, policies, which come within the domain of the Parliament but does not come outside the Parliament. She stated that in her opinion the country is not satisfied on account of lack of sufficient information regarding matters like the Special Economic Zone Act or the Nuclear Deal. She also observed that there is hardly any debate anymore on such issues in the democratic framework; and hence the suo-motu disclosure of information of all possible nature is a very important tool, which one looks forward to make use of the same frequently. Ms. Patkar observed that NCMG receives largest number of RTI applications and thus she would expect Shri Jairaj Pathak to present his point of view as to what does he feel about the information that the agency representatives are providing to the elected representatives vis-à-vis common citizens of *bastis*. She raised certain basic issues regarding insufficiency of data with the states in respect of the population affected by any particular project.

18. **Prof. M.M. Ansari** introduced the speaker and stated that the presentation summarizes the analysis on assessment and grading of public authorities in terms of greater Transparency and Accountability with Least Corruption (TALC) on the basis of questionnaire prepared by the Committee of the Information Commissioners. **Shri Pankaj K.P. Shreyaskar, Joint Registrar, CIC** gave a power point presentation on the issue. Shri Shreyaskar introduced the concept of Transparency and Accountability with Least Corruption index, as indicated in Good Governance. He stated further that the TALC index provides the status of preparedness of the public authorities to promote transparency, accountability and contain corruption.

Shri Shreyaskar, in his presentation, discussed the methodology and approach for preparing the TALC index. He stated that the overall scores of the public authorities are classified under five grades. The Public authorities scoring higher percentage on this count are considered to performing better on the parameters of transparency and accountability with least corruption. He informed that, based on the criteria evolved by the Committee of Information Commissioners, consultations were made with 24 public authorities. The salient conclusion of his presentation, were that evidences for 58% of public authorities, support the view that the higher TALC index indicates that the public authority is likely to receive lower number of RTI applications and vice-versa. He illustrated further that the fewer number of RTI applications in case of 25% of public authorities are attributed to lower TALC index. These public authorities have to handle relatively major public interest issues leading to possible public anguish in terms of their activities. Further to this in case of 17% authorities despite higher TALC index the request for information was also higher. He could also corroborate empirically that the RTI regime has brought about significant increase in public participation in the decision making process of the above mentioned public authorities. He concluded by presenting the finding of the analysis that higher incidence of e-Governance reduces the need for filing of RTI applications to the extent possible since it ensures availability of maximum information in the public domain.

19. **Shri Shailesh Gandhi, Central Information Commissioner** gave a power point presentation on the status of compliance of Section 4 of the RTI Act by various public authorities of Government of National Capital Territory of Delhi. Shri Gandhi, in his opening remarks, observed that the public authorities are inter alia expected to disclose information in respect of the procedure followed in the decision making process, including channels of supervision and accountability; the norms set by it for discharge of its functions; the rules, regulation, instructions, manuals and records held by it or under its control. In his presentation, Shri Gandhi presented the compliance status of the direction issued by the Commission relating to selected departments of the Government of NCT of Delhi. He commented that the direction issued by him regarding compliance of Section 4 with respect to the disclosures of names that applied for Pensions and Provident Funds in Transport Department, does not seem to have been complied. He noted further that the Drugs Control

Department, however, complied with the direction of the Commission regarding uploading the list of pharmacists working in various medical stores in Delhi. In his presentation, Shri Gandhi stated that Department of Food Supplies and Consumer Affairs, Department of Urban Development, Department of Social Welfare, Directorate of Education, Government of NCT of Delhi, University of Delhi complied with the directions of the Commission regarding their obligation towards disclosing significant informations of larger public interest suo motu as mandated under section 4 of the RTI Act. Shri Gandhi also noted that the absence of culture of transparency, widespread computer illiteracy amongst staff and lack of centralized web updating systems are some of the impediments in compliance to Section 4 of the RTI Act. He concluded by stating that ensuring computer literacy amongst government employees and disclosure of updated details of transactions, barring a few are the way forward in the direction of ensuring qualitative proactive disclosure as mandate under the Act.

20. **Sri Niten Chandra, Director, MoRD, GOI** gave a power point presentation on **Strengthening the Right to Information: Proactive Disclosure under RTI- Problems & Perspectives**. Sri Chandra in his opening slides presented the National Rural Employment Guarantee Act (NREGA) and the proactive disclosure requirement that it contains. The Act mandates that all information shall be published in public domain and made available in electronically downloadable form free of cost. He observed that Management Information System (MIS) is necessary for the accountability and transparency and the system prepares inventory of projects undertaken/assets created under NREGA as well as for future planning. Sri Chandra exhibited the form in which the job cards and muster rolls are available in public domain through <http://nrega.nic.in>. While presenting the salient features of the NREGA he impressed upon the concept of inbuilt social audit into it. He stated that the social audit is conducted once in every six months. The Act also incorporates various sources and methods of feedback mechanism. His presentation also discussed the challenges that the implementation of the NREG Act is facing. Sri Chandra concluded the presentation with the grievance redressal mechanism of NREG Act.

21. **Sri Jairaj Pathak of Municipal Corporation of Greater Mumbai** made presentation about salient features of proactive disclosure of Municipal Corporation Greater Mumbai. In his opening slide Sri Pathak observed that optimal use of ICT is

the only way to improve G2C services. He made a detailed presentation on the facilities that the MCGM portal offers to citizens. He noted that the better usage of the ICT by the corporation has improved the efficiency in its services to citizen. The corporation is fulfilling its mandatory duty of information dissemination by organizing weekly press conferences on various aspects of the functioning of the municipality. He also stated that the press is allowed to sit in corporation meetings and important committee meetings. Sri Pathak in his presentation quoted Franklin Roosevelt as to how Statesmen must educate and teach always because the greatest duty of a Statesman is to educate. He made available so much news and maintained such a friendly attitude towards reporters that he quickly and easily won their sympathy. Sri Pathak concluded by presenting the public disclosure law, which is in practice at MCGM. He mentioned that all local bodies up to the smallest Panchayat publish their information on a periodical basis for the benefit and information of the public. However the modes of dissemination could vary from notice board to Annual Report and website; depending upon the size of the panchayat/municipal corporations.

Technical Session 3: -

22. The third technical session on '**RTI in developing world**' was chaired by Shri A.N. Tiwari, Central Information Commissioner. The panelists for this session were Mr. Mohamed Latheef from Male, Maldives, Mr. Rukshana Nanayakkara from, Colombo, Sri Lanka & Shri Venkatesh Nayak, CHRI, New Delhi.

23. The session began with a presentation by **Shri A.N. Tiwari**. Shri Tiwari initiated the discussion with an analysis of limitations of the Right to Information. He observed that RTI is a relatively recent phenomenon and there is not enough research material on RTI in developing countries. He observed further that the developing world is extremely diverse in regard to socio-economic condition, constitutional status and political systems, culture, history and state of law and order, etc. which makes any generalization difficult in respect of them. He noted that while "Developed Countries" is essentially an economic phenomenon, "Developing Countries" is a political description. His findings about RTI as adopted by developing countries reveal that out of 178 countries, 144 developing countries had RTI Act in place and 42 countries of developing nature were having either Right to Information or freedom of information laws.

24. **Shri Tiwari** noted that a majority of Developing Countries, which have RTI Act, are democracies. Approach to RTI as a rights-driven instrument differs from democracies of single party ruled States, authoritarian States and covert authoritarian States. He observed that only 1/5th of World's population generally have conditions favorable for RTI. The principal worry of these vast numbers of remaining people in [Least Developed Countries](#) (LDCs), is essentially their right to live — including access to food but not limited to health, education potable water etc. In his presentation Shri Tiwari analysed the reason as to why developing world is slow in adopting or promoting RTI. Slow democratization, limited participation in globalization process, low literacy rates, absence of Civil Society or Civil Society movements and inadequate or absent administrative culture were some of the reason for slow adoption of RTI by the developing world. He further noted that there is pronounced “Digital Divide” between Developed and Developing World including LDCs. Access to electronic information — radio; television or Internet — is still poor in Developing Countries, especially in Least Developed Countries. Shri Tiwari mentioned that the Millennium Development Goals (2006) highlighted that the digital divide was working against spread of RTI in Developing Countries and it's strengthening in those countries that already had it. Shri Tiwari stated that the transparency in governance needs to be promoted as a virtue in itself — a symptom of contemporaneousness of government — rather than a by-product of basic human rights. He stated that if we accept that a full democracy is a pre-condition for the right to information, it can also be said that Developing Countries have not had the chance to use the right to information wholly yet. Shri Tiwari in his presentation observed that transparency will promote Trust and Social Capital by lowering — if not eliminating — the barriers between the government and the governed. It will prevent rent-seeking and myriad forms of government corruption that impair optimal utilization of resources to promote welfare. He further stated that transparency is imperative and enables Developing Countries — whether democratic or otherwise — to attract private investment including world-wide investment avenues for “impact finance” in areas such as poverty alleviation, literacy and education, healthcare, infant mortality, nutrition, environment and so on. Shri Tiwari concluded by giving a comparative presentation about RTI regimes in developing countries on selected parameters.

25. **Mr. Mohammad Latheef** from Maldives in his opening remarks stated that Maldives would like to learn from India. Mr. Latheef approached the theme by stating that his country, though it became a republic in 1968 continues to function in an environment of control and secrecy. He observed further that though there are small community based organizations in Maldives, the role of civil society organization is very critical for democratization of the process *inter alia*. The present Government has given their citizens RTI, albeit through regulation. He further observed that despite high literacy rate of around 95%, there is a clear-cut divide in regard to the privileged and the ordinary class and one of the reasons for such a divide is the dormant state of civil society organizations. He concluded at the end by stating that despite the concern as stated there is indeed a ray of hope for the Maldives in regard to putting in place such legislation in future.

26. **Shri Rukshana Nanayakkara of Transparency International, Sri Lanka** presented the context in which Civil Society Organisations operate in his country. In his opening remarks, he stated that the country is in the process of recovering from the trauma of a recently concluded civil war; and there is very little space for civil societies therein, and also that the attitude of the State towards civil society organizations are not very congenial. In his presentation Shri Nanayakkara discussed about challenges in the areas of conflict resolution and national integration in his country. He observed further that in the given context they could generate very little public debate on RTI over last three years. He also presented the legal framework by elucidating article 10 and 14 (1)(a) of the Sri Lankan Constitution. Shri Nanayakkara was of the opinion that the countries with such legislations like RTI, exhibit concerted efforts in reducing corruption and are able to create a better mass awareness about overall governance. In this context he cited the rising level of corruption perception index in case of Sri Lanka and thus felt necessary for the government of the day to seriously initiate a procedure to lay down such legislation in place. He concluded by naming access to information draft bill 1996, which was presented to the Cabinet in 2004 as a little effort has so far been made in Sri Lanka for introducing RTI.

27. **Shri Venkatesh Nayak of Commonwealth Human Rights Initiatives (CHRI), India** in his power point presentation on the 'State of RTI in developing world'; began with the concept of right to know and the French Revolution. He analyzed the developments made in bringing about the access to information law in various countries up to 1989 including Finland (1951), USA(1966), Denmark (1970), Norway (1970), France (1978), Netherlands (1970), Australia (1982), Canada (1982), New Zealand (1982), Greece (1986), Austria (1987). Shri Nayak in his presentation gave a list of 31 countries in 20th Century and 55 countries in 21st Century and five others, which have put in place RTI laws. Shri Nayak elaborated the key aspects of RTI in the American and the Caribbean countries. He observed that American Convention on human rights guarantees RTI as part of freedom of speech, thought and expression (Art. 13). He noted that Bolivia, Brazil, Costa Rica, Guyana, Paraguay, Surinam, Barbados, Bahamas, Dominica and several other island nations & territories do not have RTI laws in place. Shri Nayak also presented the state of RTI in Africa stating ECOWAS Treaty obligates signatories to ensure information flows to rural people, women, youth & media. He noted further that only five of 54 countries have RTI laws in Africa. Presenting a glimpse of RTI in Asia, he observed that South Asian Association of Regional Cooperation (SAARC) Social Charter recognizes the value of transparent and accountable administration in public and private spheres [(Art. 2 (xvi)]. There are no regional human rights mechanisms in place, however, in Asia. Shri Nayak noted that whereas 21 countries so far in Asia have RTI laws Afghanistan, Bhutan, Cambodia, Laos, Mongolia, Myanmar, N. Korea and several others do not have any RTI laws. While presenting state of affairs in regard to the RTI in the Pacific, he observed that only three countries have RTI laws in the region. Shri Nayak in his concluded by presenting the status of RTI in Europe. He stated that European Convention for the Protection of Human Rights recognizes RTI (Art. 10). Though more than 40 countries in Europe have RTI laws. Cyprus, Luxembourg, Monaco, the Vatican and several territories do not have any RTI laws in place.

Technical Session 4

28. Shri Sanjay Baru chaired the Fourth Technical Session on Propagation of RTI Culture, Role of Media and other traditional means, the then Media Advisor to the PM. The other panelists of the Session were Shri R. Dilip Reddy, State Information Commissioner, Andhra Pradesh, Shri K.A. Badrinath, Senior Editor, Financial

Chronicle, Shri Sanjay Gupta, Editor and Chief Executive Officer, Dainik Jagran and Shri Vinay Tiwari, Managing Editor, CNN-IBN, New Delhi.

29. Shri **Sanjay Baru** introduced the subject and invited Shri Badrinath to present his paper on the RTI Culture. **Shri Badrinath** began by stating that information facilitates active participation of people in democratic governance, helps assure law enforcement and also helps delivery of public services and development schemes. He opined that RTI regime could enable the media to expose mal-administration, corruption, inefficiency, and propagate stories on accountability, transparency and good governance. Shri Badrinath suggested some areas of concern for the media and desired that they should address these concern by reporting and analysing them. He also affirmed that it is the duty of the media to give wide spread coverage to inefficiency in public services, highlighting cases or efforts made by civil society organisations, communities and individuals by and large monitoring the implementation of RTI Act. Shri Badrinath gave a prescription as to how media can undertake these assignments and take necessary measures with the help of RTI. He was also of the opinion that RTI is a significant law that widens the scope of social audit in development projects and public policy programs. In his opinion, RTI and media can play significant role in making public institutions visibly accountable. He concluded by advising the fraternity to play an effective role in strengthening the implementation of RTI Act by reporting the instances of social audits of various developmental and welfare measures undertaken by the State.

30. **Shri R. Dilip Reddy, State Information Commissioner** emphasised the need for introspection regarding the implementation of RTI by various stakeholders. Shri Reddy was of the opinion that media has two fold responsibilities in regard to the implementation of RTI viz. giving adequate space and coverage to issues that expose the lapses in the functioning of the government and to make use of RTI itself towards this end, so that government becomes transparent. Shri Reddy noted that media could effectively help in generating confidence among people regarding democratic traditions in India. He was of the view that merely getting information cannot redress the problem. However, he observed that the media is yet to address the problem in the manner it should do. Shri Reddy concluded by suggesting that media should refrain from making allegations without substantial

evidence; since in the absence of such evidences confidence of the people in Institutions gets weakened. He observed that the Right to Information is a revolutionary act and will certainly bear fruits in the longer run.

31. **Shri Sanjay Gupta** noted that RTI is a great tool in the hand of the citizens to influence the decision making process in the Government. He, however, inquisitively stated as to why so much time has been taken for such an act to come in to force. Shri Gupta observed that there is a need for a hygiene factor for RTI to flourish. He stated that RTI is currently being used to expose only the negative aspects and that such exposure is not taken positively by the concerned stakeholders. Shri Gupta concluded that the RTI Act is only a beginning and it is only a part of the solution and not the complete solution.

32. **Shri Vinay Tiwari** in his extempore speech observed that the issues relating to RTI should not only be discussed seasonally but continuously by the media. The assumption that the reporters know everything needs to be demystified. He was greatly enthused by the efficacy of the RTI Act and invited the Information Commissioners and the Commissions to educate journalists in electronic media about the RTI Act, since he felt that very few journalists know about the RTI Act. He emphasised that there is a need for greater involvement of the journalists with the activities of CIC/SIC with the view to take a call on those aspects of governance that needs emphasis in their analyses. Finally, he spoke about dangers inherent in selective dissemination of news. Shri Tiwari emphatically stated that RTI has a great potential to improve the quality of TV journalism in India.

33. **Shri Sanjay Baru** concluded the Session by observing that media have always had the right to inform the people independent of any such Act. He noted that the Media has an obligation to remind the Government that they have are duty bound to inform irrespective of any Act. Shri Baru felt that there is a need for enactment of a law that forces the government to place the necessary documents in public domain. He observed that the job of media is not only to use RTI; rather they have a wider responsibility to keep the public authorities under check. He stated that they are not adequately aware and conscious that each government instrumentality is duty bound to disseminate information. Shri Baru concluded by stating that by and

large media has supported the RTI Act and has played meaningful role in its implementation.

Technical Session 5

34. The fifth technical Session on “**RTI – Role of Political leadership**” was chaired by Shri Wajahat Habibullah, the Chief Information Commissioner, Central Information Commission. The other panelists of the session were Shri Arun Jaitley, Hon’ble Member of Parliament, Shri Sitaram Yechury, Hon’ble Member of Parliament, Shri Jai Prakash Narayan, President, Loksatta, Andhra Pradesh and Shri Jagdananda, State Information Commission, Orissa.

35. **Shri Wajahat Habibullah, the Chief Information Commissioner** introduced the subject and referred to the key note address of Lord Desai wherein he had observed that RTI is a vital element of the whole democratic process in the context of participatory democracy. Shri Habibullah observed that various wings of the government-Executive, Legislature and the Judiciary are discussing the issues relating to strengthening the right to information in all its manifestations at length.

36. **Shri Arun Jaitley** at the outset wondered why it took so long for India to adopt such a law. He said that when one asks this question the immediate thought that comes to his mind is the attitude and the mindset of the decision makers. He cited as to how questions were raised about the perceived threat to the national security on the issue of opening of the television rights to the private players once upon a time. He stated further that in the event of having such a law in place the biggest threat would be the departments themselves since in absence of any such law the custody of the files was the privilege to the department. He noted that this moot point is now partly cracking up. It was cracking up for the reason of guaranteeing the Right to Information, a right being associated with one of our most cherished ideals. Shri Jaitley observed that he has seen the decline of many rights like freedom of expression, fundamental rights, and liberty and so on. Freedom of expression was amongst the fundamental rights and judiciary treated it as a holy cow. He hoped that the Right to Information will not see the declining fate like others as mentioned earlier. This is one right that is embedded with reasonable restrictions, for example, the agreements between foreign nations, public order, the privileges of parliament and few other exceptions, barring these all other informations are provisioned to be

placed in public domain. He further opined that, contrary to the common perception politicians are more transparent because their field of activity is before the public eyes and the Public can be very brutal to the politicians which is demonstrated in elections. In fact, the judiciary and the executives are not as transparent as political class since they do not come in direct contact with the general public. As regards judicial appointments Shri Jaitley mentioned that there should be a system wherein certain threshold criterion is set for those who would be considered for appointment as Judges. He identified certain criteria like the number of cases where the law has been laid down, the number of junior advocates that they have trained, etc. These parameters may go into the determination of the ranking of candidates for appointment as Judges. Shri Jaitley felt that this will improve the standard of Judges in the Country. In the absence of any criteria at the moment, he observed that certain judges who were appointed do not even qualify to be in the first 1500 candidates for the post to which they were selected. While describing the Public Authority, he averred that certain private bodies, which may not be funded by the government, actually perform public functions and thereby qualifies to be public authority under the RTI Act. He cited examples of BCCI and other sporting organizations, which actually are neither controlled by the Government nor funded by State, yet they represent India as far as the sport is concerned. Dwelling on Official Secrets Act, he mentioned two sections of the Act, viz. Section 3 and Section 5, which he felt need to undergo change by now. In view of the changing scenario, there is a need to have a serious look into the Official Secrets Act and see that there is a harmony between the Official Secrets Act and the RTI Act. He concluded by stating that since the RTI Act is in force section 5 of the OS Act impliedly has been repealed.

37. **Shri Sitaram Yechury** began with the observation that there is no political opposition to the Act, but judiciary cannot be outside the ambit of RTI. It is not an issue of integrity but of infallibility. The role of a political representative is to unearth the weakness of the system. In this regard he observed that the marginalized and poor people are gradually able to reap the benefit of RTI. Shri Yechury spoke at length as to how the Act can be strengthened. He observed that the awareness is lowest among the marginalized Sections. Wherever, it has reached, it has helped the people. It is important therefore to create awareness in regard to the RTI Act among all sections of the society in general and among marginalised class in particular. He

opined that the Centrally Sponsored Schemes need to be interwoven with the salient features of RTI Act. Shri Yechury commented that another area of concern is appointment of Information Commissioners. He felt that there should be a pool of persons from which the names for appointment should be considered. However, in the present scheme of things, the people appointed can belong to any profession. He observed further that there is a need for strengthening the implementation of section 4, the proactive disclosures of the Act and ensuring that the provision has legal enforceability. The penalties imposed are really dismal and thus stringent penalties should stringently be imposed. He emphasised for putting in place grievance-redressal mechanism as well in order to deal with the cases where a person has been victimized for seeking information from a Public Authority. He also spoke about the incidents of intimidation and victimization of the information seekers under the RTI Act. He cited the case in UP where a person was murdered for seeking information. Shri Yechury concluded by observing that there is a need for bringing all corporate bodies too within the ambit of RTI.

38. **Shri Jaiprakash** Narayan of Loksatta in his opening remarks observed that the RTI Act is merely a means to a larger end but is not an end in itself. While emphasising the essence of such an Act in place he cited a famous quote “*The capacity for justice makes democracy possible but man’s inclination to injustice makes democracy necessary*”. He was of the opinion that the notion of political leadership being incidental is dangerous. Shri Jai Prakash Narayan observed that stakeholders need to utilize the Information Commissions more openly. He was of the opinion that there is need for empowering the Commission and also that there is an urgent need for the grievance redressal institutions to be put in place either independently or along with the Information Commission itself. Shri Jai Prakash emphatically observed however that the cabinet deliberations need not always be made public as the transparency is not the same as nakedness. Since most of the times the cabinet does not function collectively as perceived and in that case if the deliberations are made public it will not be possible for the Government to function. Shri Jai Prakash also observed that the transparency is not sufficient for the good governance. He noted that three linkages coupled with the transparency can certainly bring about significant change in the governance. The linkages between vote and public good, linkage between authority and accountability and linkage between taxes

and services are the most important linkages, which he said we are failing to establish. He realized that the RTI Act has a potential to put in place the culture of Public policy debate especially with a view to expose corruption, if any. He observed by quoting Gladstone “*The purpose of the government is to make it easy for the people to do good and difficult to do the evil*”.

39. **Shri Jagadananda**, the State Information Commissioner, Orissa began with quoting excerpts from Prime Minister’s speech regarding political will. He listed some of the roles of the political leaders by observing that their prime role is legislative overview. Shri Jagadanand analysed the relationship between the Public Authorities, members of the public and the Public Information Officers. He suggested a prescription regarding compliance of the proactive disclosure. He noted that increasing efficiency is the only alternative, which may reduce pressure on public authorities. He felt additional resources, review of norms and standards, training and sensitization, IT enabled databases and e-governance, streamlined procedures and guidelines/templates and balanced incentives and penalties are some of the parameters that may prove instrumental in enhancing the efficiency of the government machineries. He noted that there is an opportunity to alleviate poverty and reduce corruption through empowering the citizen to become active. Shri Jagadananda concluded by suggesting setting up RTI ‘clinics’, citizens assistance centre, Organization of Information Fairs, dissemination of educational matters in local languages and providing of support to the NGOs, RTI activists and others.

Technical Session 6: -

40. The sixth and concluding session on ‘**RTI and other Laws in India**’ was chaired by Mr. Justice Madan B. Lokur, Hon’ble Judge, High Court of Judicature at Delhi. The other panelists were Shri M.L. Sharma, Central Information Commissioner, Shri S.V. Joshi, State Chief Information Commissioner, Maharashtra and Shri L.C. Singhi, Former JS (Law), Central Information Commission, New Delhi

41. In his opening remarks **Justice Lokur** noted that Section 22 of RTI Act provides for overriding power to those statutes that may be inconsistent with the RTI Act. While setting the order of the presentation Justice Lokur framed a query as to whether the information regarding the matrimonial case tried in camera under section 22 of Hindu Marriage Act can be provided to the information seeker, if sought for under RTI Act. Justice Lokur also put another poser whether the

information relating to child victims of sexual abuse can be provided under RTI to citizens by the court. Justice Lokur concluded by observing that the RTI Act is a citizen friendly law and it should remain so. He was of the opinion that litigation relating to RTI should be avoided.

42. In his presentation, **Shri M.L. Sharma, Central Information Commissioner** noted that the Right to Information is an enabling Section of the Article 19(1)(a) of the Constitution as per Supreme Court rulings. As we all know, Section 3 of the RTI Act empowers the citizens of India the Right to Information. This is pre-supposed by the management of information by way of cataloguing, indexing, including computerization, etc. He noted further that in addition there are 3 sets of laws, viz. Laws which provide for maintenance of public records; Laws which provide for disclosure of public documents; & Laws which deal with matters of commercial confidence, trade secrets or intellectual property etc, which essentially bar disclosure. He analyzed the other laws which provide for disclosure of information viz. Indian Evidence Act – Section 76, Code of Criminal Procedure – Section 91(1), Income Tax Act – Section 138 (1) (b) of IT Act, The Trade Marks Act, 1999 – Section 148 and others. Shri Sharma stated in his presentation that as per Section 138 (1) (b) of the Income Tax Act, a citizen can file a request before the Chief Commissioner of Income Tax or the Commissioner of Income Tax and those authorized can disclose that information if they feel that such disclosure is in public interest. However, the CIC's Full Bench Commission decision has held this information as personal information. His main emphasis was that the Central and the State Governments should strengthen the disclosure available in the other existing laws, which would, to a great extent, minimize the burden and pressure on the CPIOs and the First Appellate Authorities of the public authorities. Shri Sharma concluded by elaborating the third-category of laws, which specifically prohibit disclosure of information, which are Copy Rights Act, 1957, The Patents Act, 1970 and The Official Secrets Act, 1923.

43. **Shri S V Joshi, State Chief IC, SIC, Maharashtra** observed that RTI Act has potential to create a conflict with the interest of the Government. The Sources of such a conflict begins with the Official Secrets Act in a big way. Despite recommendations of many committees' the OSA, as is known has so far not been repealed. The Committees' were of the opinion that the salient provisions of the OSA may be incorporated in the National Security Act. Shri Joshi observed that the time has come

wherein the Oath of Secrecy should be replaced by the Oath of Transparency. He advocated for implementation of recommendations of the 2nd Administrative Reforms Commission for use of 1% of the budgetary expenses on improvement of the system of record management.

44. **Shri L.C. Singhi, Former JS (Law), Central Information Commission** analysed the RTI vis-à-vis other existing laws and made a detailed presentations about various aspects of the RTI. In his opening remarks, Shri Singhi observed that the Right to Information Act is a special legislation based on general considerations. It is basically a substantive law, which confers a right on every citizen to access information concerning the functioning of Public Authorities. It covers certain procedural aspects also but like many other statutes, it does not provide for everything. Shri Singhi exhorted that the other laws which impact or influence or which are in any manner related with the right of Information Act can be discussed under three different sub-heads: -

- The laws, which empower the concerned Public Authority to access information available with a private body.
- The laws that the functionaries under the Right to Information Act need to take recourse to for effectively exercising their functions under the Act.
- Other laws dealing with dissemination of information in any manner.

45. Shri Singhi succinctly presented his viewpoint on whether the Commission is a Court or a Tribunal. He concluded that the Commission, constituted under the RTI Act, is essentially like any other Administrative Tribunal. However, although not a law court in its true sense, it is also a court but in a limited sense, and is bound to act independently and impartially and exercise judicial authority without any fear or favour and, thus, would be a court within the meaning of the provisions of the Evidence Act and the Contempt of Courts act. He also presented the details of the legislations having a bearing on the RTI Act. While presenting his detailed viewpoints in regard to the civil procedure code and the RTI he concluded that the proceedings before the Commission whether under Section 18 or under Section 19 are sui-generis and totally different. The Commission need not follow the procedure followed by a Civil Court while deciding either a complaint or an appeal, but the basic principles of the Code will guide the Commission and should be followed in all

proceedings conducted by it. While comparing the Indian Evidence Act and the Right to Information Act, Shri Singhi observed that since the Right to Information Act does not cover these aspects, the Commissions working under the RTI Act have to be guided by and are required to follow the Law of Evidence. The information technology Act has also introduced certain changes in the practice and procedure followed by the Public Authorities and accordingly laws are required to be amended. The terms used in the RTI Act but not defined may have to be understood in that context. While comparing Indian Penal Code and the Right to Information Act, he inter alia noted that a public servant disobeying the directions of the Commission or failing to render required assistance to the Commission may commit an offence punishable either under Section 166 or Section 178 of the Indian Penal Code. There may be occasions of commission of offences concerning tendering of false evidence or fabricating evidence. Shri Singhi in his comparative analysis of CrPC and the Right to Information observed that though the Commission is certainly not a criminal court for recovery of penalty imposed by the Commission in exercise with the powers conferred under Section 20 of the Act, the Commission may take recourse to the provisions of Section 63 to 70 of the IPC and the relevant provisions of CrPC. Shri Singhi also observed that recourse to other laws is a must for RTI functionaries in order to ensure that the duties assigned to them under the act are effectively discharged. He concluded that here is no automatic repeal of existing laws.

Valedictory Session: -

46. **Shri Mohammad Hamid Ansari**, Hon'ble Vice-President of India delivered the valedictory address to the Convention. At the very outset he mentioned that this annual gathering provides a useful forum to discuss whether the intent of the law that set out to provide '*a practical regime of the right to information to citizens*' has been realized. It is important to reiterate the purpose of the Act as set out in its preamble, '*to promote transparency and accountability of every public authority*' and also '*to contain corruption*'. This Convention is also a stock-taking occasion where all practitioners gather to exchange best practices and explore ways and means to harmonize various conflicting interests while "preserving the paramountcy of the democratic ideal", as set out in the preamble of the Right to Information Act. When passed in 2005, it was hailed as a revolutionary step aimed at fundamentally altering the balance of power between the government and citizens. Four years hence, some dissatisfaction is evident and some major concerns need to

be addressed. There are a vast number of organizations that should have been covered under the definition of “public authority”. It would be useful to review if practice of cataloguing and indexing of records and data-sets has changed during the last four years in a manner that could facilitate the Right to Information under the Act. It is important to note that Section 4 of the Act mandates every public authority to public the manner of implementation of various subsidiary programmes. Currently, the Central Information Commissioners works in relative isolations and there is a need for mandatory monitoring mechanism to look at the importance of RTI Act and to ensure that the Act is implemented in letter and spirit.

48. The Vice President however observed that the existence of dissatisfaction is by no means a denial of the significant achievements of the RTI Act in bringing about transparency and reducing corruption. The basic tenets have been implemented and citizens are utilizing the institutional structure. The Right to Information has become an important instrumentality to our media and civil society. What we see is the beginning of decentralization and participatory governance and a citizen-friendly orientation to government. The previous Conventions of the Central Information Commission came forth with an exhaustive list of recommendations. He said that he is not aware of the extent of acceptance and implementation of these recommendations by various stakeholders. The collective outcome of a convention of Information Commissioners must be subject to serious deliberation and active consideration, with a view to appropriate implementation. He hoped that the results of this Convention would be seriously studied and lead to better implementation of the Act. He concluded by noting that empowerment would be meaningless if it is sought to be achieved through a language that the common citizen does not understand. Section 4(4) of the RTI Act mandates that “all materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area”. Article 350 of the Constitution also entitles every person “to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be”. He emphasised that this aspect must be given due consideration and actioned so as to make the right to information a reality.

Recommendations of the Convention 2009

The fourth convention broadly recommended the following:

- a. There is a need for standardization of the processes in the functioning of the Government.
- b. Usage of ICT for better management of data and records.
- c. Immediate implementation of capacity building of various stakeholders, propagating RTI, making interventions in the education medium and setting up a National Resource Centre for RTI as a project of the government.
- d. Maximum information be disclosed proactively in keeping with Sec 4 (1) especially in Macro level projects of Government. Proactive disclosure norms be incorporated in all centrally sponsored schemes.
- e. Creation of common portals for updating every variety of government information centrally, which shall be freely downloadable by citizens.
- f. Transparency in governance needs to be promoted as an end in itself — a virtue of contemporariness of government — rather than a by-product of basic human rights.
- g. The Media has the obligation to remind the Government that they also have the duty to inform independently from the Act; and thus there is a need for implementation of those aspects of the law that mandate that Government place all disclosable information in the public domain.
- h. There is a need for bringing all corporate bodies within the ambit of RTI Act.
- i. There is a need for strengthening the grievance Redressal mechanism in the Government parallel with the RTI Act so that the information received under the latter is used effectively for resolution of grievances.
- j. All information must be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in the local area.