

**Proceedings of 13<sup>th</sup> Annual Convention of Central Information  
Commission, 12.10.2018**

1. **Chief Information Commissioner, Shri R.K Mathur**, welcomed the Hon'ble President to the 13<sup>th</sup> Convention of the Central Information Commission. He thanked the Union Minister Dr. Jitendra Singh for his presence. He thanked everyone present for their participation. He said that this Convention has been held every year as a measure of stock taking on progress of implementation of RTI Act as also to find ways and means to make better deliveries under the RTI act. He said that since the last convention, significant changes have taken place in the functioning of the Central Information Commission. The Commission is now housed in its own new building. This gives state of the art support to the work of the Commission. He stated that the Commission is now fully equipped to do e-hearing and online registration of cases. The new cases filed are now converted to digitised format and the system gives real time information to the citizens of the status of registration and disposal of their cases. CIC website has been updated and is more citizen friendly. The Commission has its own studio and the quality of video conferencing has taken a quantum jump. He stated that continuous interaction between the Central and States Commissions under the aegis of the National Federation of Information Commissions of India have helped the Centre and State Information Commissions to add to the quality of their orders. He added that this endeavour will continue to improve the quality and speed of delivery to the citizens of our country.

2. **Hon'ble Minister Dr Jitender Singh** said that the Government is committed to strengthening the RTI Act and its Institutions. He said that the number of Public Authorities brought under the RTI Act have increased from 1,600 to 2,092 during the last four years. The disposal rate of RTI applications has also increased from 20,147 in 2013-14 to 29,005 this year. He further stated

that the increasing number of RTI requests is a result of the transparency in governance process ushered in by the Government under the leadership of the Prime Minister Shri Narendra Modi. He stated that presently the CIC has six Information Commissioners, besides the Chief Information Commissioner. Dr. Jitendra Singh said that the Government has already initiated the process of selection of CIC and ICs, as vacancies shall arise soon. He informed that the Government will neither hold back nor delay appointment of CIC/ICs.

**3. Hon'ble President Shri Ram Nath Kovind** inaugurated the 13th Annual Convention of the Central Information Commission. He stated that in 2006, his distinguished predecessor Dr A.P.J. Abdul Kalam had delivered the inaugural address at the very first convention of the CIC. He observed that today's date marks the anniversary of the day in 2005 when the Right to Information Act had come into force. He said that over the years, the RTI Act has contributed to the deepening of our democracy and has helped add to the knowledge base of our citizens. He said that he was a Member of Parliament when the RTI law was enacted and was part of the Standing Committee deliberations that helped in giving final shape to the legislation. As such, this was a moment of personal satisfaction for him.

He stated that free flow of information is the essence of democracy. For the people of a free and free-spirited country, information is power. He said that the citizens have a right to know how they are being governed, how public money is being spent, how public and national resources are being deployed, how public services are being delivered, and how public works and welfare programmes are being carried out. He further stated that the Right to Information builds on these principles. It creates a pedestal for transparent and participatory governance. In 1946, the first session of the United Nations General Assembly resolved that the "Freedom of Information is a fundamental human right and the touchstone of all the freedoms to which the UN is

consecrated.” He stated that first RTI-related law was introduced in Sweden in 1766 – over 250 years ago. In 1990, as the Cold War ended, only eleven countries had an RTI law. In the wave of democratisation that followed, between 1990 and 2016, 104 more countries gave themselves RTI laws. India was part of this dramatic expansion.

He said that in India, the Central and State Information Commissions are the custodian of the RTI Act. In the past 13 years, the CIC, along with the State Information Commissions have enforced this law and empowered the citizens with the information that they seek. India has appointed half a million Public Information Officers under the Act. He stated that the estimate of requests for information is as high as about six million a year. These numbers are astounding. Appropriately, they are the highest in the world, in keeping with India’s status as the world’s largest democracy. He congratulated the CIC and all sister and subordinate institutions for their achievements in serving the citizens.

He said that RTI Act is not a standalone law. It is part of the larger narrative of strengthening of Indian democracy, of ensuring transparency in governance, and of building capacities of the common citizen to enable him or her to take informed decisions and choices. Above all, it is about nurturing the social contract of trust between the citizen and the state – where both must have faith in each other. A related and parallel implication is to ensure rational use of public resources to check instances of corruption or waste. To inform, trust and ultimately empower ordinary citizens are admirable goals but they are not ends in themselves. It is only when we link this process to the realisation of definite objectives that engage, enable and ensure efficiency – and so serve to make life that much better for the citizen – that we complete the narrative of democracy.

He further stated that RTI is part of such a wider theme. This is a theme that engages citizens by listening to them and by using citizen inputs in decision making and policy shaping. An example is the consultative process that

precedes the framing of parliamentary laws. Another example is the reception of real-time feedback and inputs on a new mechanism such as the Goods and Services Tax and a responsive government absorbing that feedback and making necessary changes. The institutional form of such a concept can perhaps be found in MyGov– conceived and created as the world’s largest citizen engagement platform. This is also a theme that enables the citizen – by giving him or her right to self-authenticate and self-attest documents. And by proactively providing information – for instance by way of constantly updated online dashboards that tell one and all how many toilets have been constructed as part of the Swachh Bharat Mission; how many LED bulbs have been distributed under the UJALA scheme; and how many loans and of what cumulative value have been given under the Mudra Yojana. RTI itself enables the citizen when it allows him or her to ascertain the pace and quality of services being delivered – why the road outside the house is not ready yet; on what basis a certain development project has been formulated; or why a certain application to a government agency is still pending.

He said that RTI is part of a theme that makes for greater efficiency in both delivering services to a citizen as well as using public resources and finances. This improves transparency and removes doubts that may arise about favouritism and misappropriation. The Internet and the digital economy have been used to advance e-auctions of mining blocks. They have helped create the Government e-Market or GeM portal for public procurement of goods and services. And the JAM trinity – Jandhan accounts, Aadhar-based unique identities and mobile phones – has helped with direct bank transfers to beneficiaries of schemes.

All these are promoting efficiency and checking wastage. They act as a bulwark against corruption. They are part of the same architecture of citizen empowerment, citizen enabling and public efficiency that has inspired the Right to Information. The quest to enhance the citizen’s access to information is

relentless. He said while it is a separate silo from the Right to Information, there is also need to look at our declassification protocols for government and archival documents and see how we can modernise these. Open government and the pursuit of legitimate public oversight are a desirable and a dynamic process. We can never do enough; we can never aim too high.

In conclusion, he touched upon the fine balance between the Right to Information and the Right to Privacy. He commended the CIC for upholding the RTI's basic charter that public records, with some exceptions for subjects such as national security, are open to public scrutiny – but private records of individual citizens are protected from intrusive third-party curiosity. We must be cautious against fringe cases that try to use the RTI mechanism to settle personal scores. Especially in an age when privacy has become a matter of such intense debate, it is crucial to maintain this balance. So far the CIC and its supportive institutions have managed this balance extremely well. He said that he is confident that the Information Commissions shall continue to do so as they push ahead with the cause of the Right to Information.

**4. Information Commissioner Shri Yashovardhan Azad** thanked the Hon'ble President of India for agreeing to address the Convention. He also thanked the Hon'ble Minister of State Dr Jitender Singh for his participation. He thanked everyone who was present on the auspicious occasion of 13<sup>th</sup> Annual Convention. He stated that RTI Act is a very important pillar of democracy. He pointed out that law related to information has been enacted in about 120 countries in the world. He stated that in the last two decades, the country has achieved many milestones. The citizen is now empowered to get information easily under the RTI Act.

In his address, **Information Commissioner Shri Bimal Julka**, focused mainly on the Central Information Commission's jurisdiction for grievance

redressal, which is predominantly the subject matter of RTI applications. Several citations of Supreme Court and High Courts were also highlighted during the presentation. Some of them include Union of India vs Namit Sharma, where the Supreme Court held that “*The Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority.*”

He further quoted the Delhi High Court in the matter of Hansi Rawat Vs Punjab National Bank and ors vide its decision dated 11.01.2013 in which it was held that “*The proceedings under the RTI Act do not entail detailed adjudication. Purpose of the Act is to enable the appellant to effectively pursue the dispute with correctness of information.*” He highlighted instances of grievances which were coming up as RTI applications e.g. service disputes, pension fixation, seniority, grant of promotion, matrimonial disputes etc. The public interest concept was also discussed.

He also highlighted the issues relating to paradigm shift in the interpretation of the definition of RTI. He emphasized upon the need for the Public Authorities/Civil Society organisations to institute sensitization and awareness workshops for educating all concerned about the provisions of the RTI Act, 2005 and initiating capacity building measures.

**5. Shri Suresh Chaudhary, State Chief Information Commissioner, Rajasthan,** stated that the Right to Information is an implied right that follows from Article 19(1)(a) of the Indian Constitution. He said that the RTI Act is a revolutionary step for strengthening and bolstering democracy, where people must be supreme and have the right to know about the functioning of all central and state authorities, so that they can monitor their work. RTI has empowered the public by enforcing accountability in governance. Further, the RTI Act’s major impact has been a shift of power from public functionaries to the actual citizen in the matter of access to public information. He emphasized upon the

proactive disclosure of information as required under Section 4 (1)(b) & (c) of the RTI Act. He also focused upon multifarious duties/obligations that are imposed on Public Authorities under Section 4 of the RTI Act. Thereafter, he gave suggestions to improve the standard set for suo-motu disclosure and achieve its objective. He presented figures about the disposal of RTI in Rajasthan and experienced serious concerns about the manner in which RTI applications are sometimes disposed. He gave some suggestions to help in improving the functioning and transparency in Government departments.

**6. Shri Nikhil Dey**, highlighted the role of the citizens who are filing the RTI applications in huge numbers. He said that unfortunately in trying to expose corruption and arbitrary use of power, nearly 70 citizens have been killed. He mentioned that the ideal measurement of Government's political commitment lies in ensuring transparency of governance and in culture of open government and not merely in responding to RTI applications. He emphasized the role of Information Commissioners in decision making and advocated methods to assist the citizens by passing decisions pro-actively and by not being a neutral entity.

He presented screenshots of Jan Sookhana portal of Government of Rajasthan, wall paintings made to portray the details of job card where citizen is unable to access websites, online procedure to obtain information from Rajasthan Government pertaining to the test of patients affected from Silicosis disease (lung fibrosis caused by the inhalation of dust containing silica). He appreciated the Government of Kerala's Finance Department's portal revealing the register of Public Information Officers along with proper disclosure of job chart and asset-wise expenditure. Overall, he emphasized the need for user friendly, real time disclosures of information as part of 'Jan Sookhna'

**7. Shri P. Janakiram, Sr. Knowledge Manager, Centre for good Governance, Hyderabad** stated that the the challenges being faced by the Public Authorities include: huge number of applications, information sought on matters which have already been voluntarily disclosed or seeking of the information that dates back to as much as two decades; better efforts are required for high level of documentation and to address unwillingness of PIOs due to other responsibilities. On challenges being faced by PIOs, he stated that they are officers in middle level of the management. The burden of meeting the time limit for disclosure of information is on PIOs. In many cases, they have to seek information from other departments as well. They do not maintain proper records and lack adequate infrastructure. Further, most of the PIOs are not trained or prepared. The speaker further highlighted the challenges faced by the applicants which include: - lack of proper awareness, PIOs not adhering to provisions of the Act and supplying insufficient information; no access to Commission in rural areas except at a cost. The speaker highlighted the challenges perceived by the Commission, which include: - non-disclosure of suo moto information coupled with the issues of lack of supervision to check such disclosures. Some of the solutions suggested include: Introduction of Gaming model based trainings that can be accessed by PIOs and applicants, certifying the CPIOs after they undergo online training successfully; pro-active disclosure audit of all the Public Authorities periodically; instituting an award for different stakeholders including to the states as “RTI Friendly State”.

**8. Shri Prashant S. P. Tendolkar, State Chief Information Commissioner, Goa,** said that considering experience of implementation of RTI Act for past one decade, the amendment to the RTI Act is the need of the day for effective results. He pointed out the provisions which require amendment. He said, preservation of public records must be made robust and information should not be denied on mere unavailability of record. He emphasised on digitisation of records for better administration of RTI Act. He

stated that the implementation of section 4(1)(a) of the Act on time bound basis can resolve the ineffectiveness of the Act due to non availability of records. He raised the issue of misuse of the RTI Act and suggested amendment of Section 7 to enable PIO to filter out frivolous applications. Finally, the speaker highlighted the ineffectiveness of mechanism of first appeals under the RTI Act. He added that FAAs cannot abdicate their duty and shift the burden on Commissions in a routine manner. He suggested amendments to bring the FAA within the penal jurisdiction of the Central and State Information Commissions.

**9. Prof. Vijayakumar, Vice Chancellor of National Law Institute University, Bhopal,** gave a brief introduction of the past initiatives taken to amend the Right to Information Act, 2005. He explained the reasons for such initiatives such as: minimal fee and maximum information seeking; one sided, weighing in favor of information seekers, etc. He then discussed about the recent proposed amendment of 2018. He stated that this seeks to transfer the power of fixing the tenure and salaries of Information Commissioners to the Central government, do away with the parity given to Information Commissions with the Election Commission in terms of salary, allowances and other conditions of service, etc. This amendment Bill of 2018 seeks to amend section 13 (1), (2); substitute (5); section 16 (1), (2) and substitute (5); and section 27 – insertion of new sub-sections (ca) and (cb). The speaker, also discussed the Justice Sri Krishna Committee’s report and the proposal for the Personal Data Protection Bill, 2018. He stated that if implemented as proposed, it would certainly make an adverse impact on the effectiveness of the RTI Act, 2005.

**10. Ms Anjali Bhardwaj** said that nearly 6 million RTI applications are being filed every year and around 40 million RTI applications have been filed so far. She stated that a very large percentage of these applications are filed by the poorest and most marginalized persons to access information about their basic rights and entitlements. The speaker highlighted that there have been

numerous attacks on RTI users and more than 70 people have been killed so far. She stated that RTI law has empowered citizens to hold the government and its functionaries accountable. She said that repeated attempts to amend the RTI Act have been made in 2006, 2010, 2013 and 2018 to dilute the Act . The recent proposed amendment (2018) empowers the Central government to make rules to determine the tenure, salaries and other terms of the service of all Information Commissioners. She said that this would adversely impinge on the independence of the Commission. The speaker stated that studies show that the Commissions frequently ignore the mandatory exceptions to the exemptions and do not order release of information. She said that their study shows that around 56% of the orders of the Commission are violated by the Public Authorities. This should trigger the process of penalty as provided u/s 20 of the RTI Act. However, it has been observed that only in less than 4% of cases, penalty has been imposed. She also pointed out that their study shows that in more than 90% of cases, the orders of the Central Information Commission now are reasoned.

**11. Shri Subhash Chandra Agarwal**, outlined the significance of changes in rules to the RTI Act through consensus of all states to ensure uniformity in the RTI rules. He stated that it should be based on basic principle of 'One Nation – One Rule'. He also opined that healthy competition amongst public-authorities and their heads can be developed for compliance of section 4(1)(b) of RTI Act by instituting awards and public-praise. He stated that RTI fees of Rs. 50, as suggested to be maximum by the Supreme Court, may be uniformly fixed which may include copying charges for first 20 copied pages. He further added that the pro-active disclosure by private sector should be made compulsory under the RTI Act. He pointed out there is a wrong perception about government interfering in working of Information Commissions though in actual practice he has observed that they are fully independent.

**12. Prof. M.S Acharyulu, Information Commissioner, CIC,** said that privacy of public servants has been protected by the RTI Act in a well-balanced manner. He said action taken on corrupt practices of public servants is not data. Any information 'relating to action taken on complaint against public servants cannot be construed as 'likely' cause of 'loss of reputation'. In the name of data protection, one should not protect corruption or corruption related information. The Data Protection Bill *in toto* should not apply to public servants and to their data except for securing their 'sensitive personal data' as defined under Section 3(35) of Data Protection Bill 2018, i.e., passwords, financial data, health data, official identifier, sex life, sexual orientation, biometric data, genetic data, transgender status, intersex status, caste or tribe, religious or political belief etc. However, even this sensitive personal data should be disclosed if larger public interest so requires. He further said that, other data of public servants like recruitment, transfer, promotion, disciplinary actions, remuneration, leaves, their endorsements in public issues, file noting with their names and notes, their reports, correspondence regarding activity of the office cannot be considered as their private data.

**13. Prof. Upendra Baxi, Former Vice-Chancellor, University of Delhi** emphasized the need for fuller utilization of the powers of Information Commissioners as endowed in the RTI Act. He referred to the struggle that led to the enactment of RTI Act and the paradigm shift that ensued therefrom. He focused on a critical analysis of the decision of Hon'ble Supreme Court in the matter of Girish Ramachandra Deshpande with respect to the provisions of Section 8(1)(j) of RTI Act. He stated that a close examination of the RTI Act reveals that no protection is provided to public servants against information about the performance of their public duties, yet it stands excluded by the apex court in the aforesaid decision. The Speaker opined that the said case should be reconsidered by a larger Bench, especially in view of its inherent instability and social impact as well as for the imbalance that it creates in the conflict between

Right to Information and Right to Privacy. He insisted that public interest should prevail. With reference to the Justice Srikrishna Committee's Data Protection Bill of 2018, he suggested that protection of the objective of right to privacy should not compromise on other values because "like other fundamental rights, privacy too can be restricted in well-defined circumstances" for advancing "legitimate interests of the State". He urged that absolute informational privacy without balancing it with competing social interests may not be conducive for achieving free and fair society and economy.

**14. Shri Venkatesh Nayak** referred to the trends of using Section 8(1)(j) to deny information by the CPIOs of the Govt. of India while replying to RTI applications over ten years (2006-07 to 2016-17) as percentage of permissible exemptions invoked. He highlighted several judgements of the Supreme Court and High Courts on the said provision. Subsequently, he referred to the COEs amendment proposal to Section 8 (1) (j) and stated that the present practice of making available the information about unqualified candidate appointed to a public post would be contradictory to the plea of "harm" in Personal Data Protection Act, 2018. Furthermore, a dichotomy would also be created in the provision of Section 19 (5) of the Act vis a vis the plea of the Public Authority about "harm" caused to the individual. He thereafter indicated the plausible problem areas in the amendment and referred to the amended provision of Section 8 (1) (j) wherein the words "would cause unwarranted invasion of privacy" in the existing provision were replaced by the word "likely to cause harm". The issue of clarity regarding the applicability of the Act to the State of Jammu and Kashmir was also raised as also the misuse of the provisions of Section 8(1) (e) of the Act with the introduction of the term "Data Fiduciaries" since after obtaining the reply containing any personal information, the RTI applicant will become "data fiduciary" and is expected to Protect data. RTI procedures need to be exempted from the coverage of the Bill.

**15. Ms. Deepa Deshpande, Director, Yashada, Pune,** said that data privacy is nothing but the regime to protect and prevent misuse of personal data. Both, the right to protection of personal data of an individual handled by various entities, including the state and the right to access information which is held or controlled by the Govt. and/or its instrumentality have been recognized as fundamental rights flowing from the Indian Constitution. She further stated that there is an inevitable need to strike a careful balance between the scope of both these rights. This conflict assumes even more importance after Justice Shrikrishna Committee submitted its draft on India's first ever Data Privacy framework, to be known as the Data (Privacy and Protection) Bill, 2017. The Draft Bill also seeks to amend Section 8(1)(j) of the Right to Information Act, 2005. The Data Bill, 2017 has introduced the concept of "Data Principal". The Bill states that the "information which relates to personal data which is likely to cause harm to a data principal and where such harm outweighs the public interest in accessing such information, having due regard to the common good of promoting transparency and accountability in the functioning of the public authority" may be released. She elaborated on the scope of terms such as, 'harm', 'common good', 'transparency', etc. In this context, she stated that objective of the RTI Act is to enhance transparency in the functioning of the Govt. authorities and the public servants. To restrict information, one needs to apply the Public Interest Test- to balance and harmonize (private) data protection and the right to information. She emphasized that a clear and unambiguous interpretation of the two laws will go a long way in effectively implementing both the fundamental rights.

The Convention concluded with thanks to all the participants from Shri Sudhir Bhargava, Hon'ble Information Commissioner.