

CENTRAL INFORMATION COMMISSION
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS

GOVERNMENT OF INDIA
NEW DELHI

ANNUAL REPORT 2005-2006

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Annual Report in a Nutshell

(2005-06)

- 1. Number of Ministries = 47**
- 2. Number of independent Departments = 2**
- 3. Number of apex-level independent offices = 7**
- 4. Total number of public authorities listed/registered in the database = 938
(including Departments and apex-level offices)**
- 5. Number of public authorities who submitted Annual Return = 837 (89.2%)**
- 6. Total number of requests received under the Act = 24,436**
- 7. Total number of the rejected requests = 3,387 (13.9%)**
- 8. Total number of cases where disciplinary action is taken in respect of administration
of the Act = 2**
- 9. Total number of cases where penalty is levied and collected = 0**
- 10. Total amount of fees and additional charges collected = Rs. 5,08,749**
- 11. Average amount paid (fees + addl. charges) by the citizen per request = Rs. 20.82**
- 12. Total number of appeals received by the Commission = 451**

13. Total number of appeals disposed of by the Commission = 441 (97.8%)

14. Total number of complaints received by the Commission = 252

15. Total number of complaints disposed of by the Commission = 241 (95.6%)

16. Number of times provisions under various sections were invoked while rejecting the requests

(a) **Total number of times provisions under Section 8 were invoked = 2,267**

(b) **Total number of times provisions under Section 9 were invoked = 27**

(c) **Total number of times provisions under Section 11 were invoked = 103**

(d) **Total number of times provisions under Section 24 were invoked = 40**

(e) **Total number of times provisions under other sections, (i.e. under sections other than 8,9,11&24) were invoked = 1,314**

CHAPTER 1: The right to information: from people’s movement to legislation

“... (d)emocracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed”

(Preamble, RTI Act 2005)

Introduction

The *Right to Information (RTI) Act, 2005*, which received Presidential assent on 15 June 2005 and came into force on 12 October 2005, marked a new and higher level of evolution of India’s parliamentary democracy. The enactment of the legislation was the result of the confluence of a variety of factors, both international and domestic.

International experience¹

The legislative embodiment of the right to information has long been recognised as underpinning all other human rights. Article 19 of the *Universal Declaration of Human Rights* of the United Nations (UN), signed on 10 December 1948, states unequivocally:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

Thus the right to freedom of opinion and expression – from which flows the right to information – and the right to seek and receive information are unambiguous elements of a historic international law to which India is a signatory. The UN Declaration gives

¹ Rowat, Donald C., *Laws on Access to Official Documents*, in *Secrecy in Government*, T. N. Chaturvedi (Ed): Indian Institute of Public Administration, New Delhi, 1980

human rights precedence over the power of the State. While the State is permitted to regulate rights, it is prohibited from violating them.

However, even before the UN Declaration was signed, there was already a movement for more transparency under way in Europe, notably the Scandinavian countries, which culminated in information access legislation that have set a benchmark for others that followed, including India. The history of the right to information is incomplete without a brief account of what these first information laws provide.

Sweden

Sweden has the oldest legislation relating to public access to official documents, dating back to 1776. The right is, in fact, provided in the Constitution itself. The principle that disclosure of information is the norm unless it is withheld by specific legal provision underlies Sweden's open access regime.

Documents that are to be exempted from disclosure are defined in the Secrecy Act. Sweden's open access regime has some remarkable characteristics that show the great successes made in promoting transparency and accountability in Government functioning. In Sweden, citizens can access documents held by any public authority, they do not have to provide a reason or show a valid or legal interest in viewing the documents. Requested documents need to be made available immediately on request or as soon as is possible from the date of request. The Constitution includes in its definition of official documents not only those documents that are prepared by a public authority but also those that are received by it. Even under the *Secrecy Act*, documents are secret only for a specified period of time and do not include court documents.

However, one limitation is that the public can access only those official documents that are completed and not those that are classified as internal working papers. In other words, the public does not have access to internal notes or drafts or tentative working papers.

Finland, Denmark and Norway

Finland passed the *Law on the Public Character of Official Documents* in 1951. The provisions of Finland's law benefited from the country having been a part of Sweden in the nineteenth century. However, the public does not have a constitutional right to access information.

Both Denmark and Norway passed their information access laws in 1970. The laws in these two countries are not as open as the Swedish Constitution. One key difference is that while in Sweden citizens are free to inspect Government documents except those restricted by law, in Denmark and Norway, they have to first identify what information they want and then request it. Thus, if citizens do not have access to the information register of a public authority, then they would not know whether the document they want even exists. However, in both Denmark and Norway – as in Sweden – citizens do not have to provide a reason for wanting to access an official document.

In all four Scandinavian countries, citizens who have been denied information can appeal to the court. In Finland and Sweden, the appellate bodies include the ombudsman, the Chancellor of Justice and/or the Supreme Administrative Court, and in Denmark and Norway, these include the ombudsman and the ordinary courts.

United States

The United States *Freedom of Information Act*, passed in 1966, provided that access to documents was to be the rule rather than the exception. However, due to inherent difficulties in enforcing compliance, this Act was amended in 1974 and the onus of justifying restriction of access to a document was placed entirely on the Government. Here too, the citizen does not have to provide reason for requesting information. The American law also provides a specific time period for responding to an information request. It goes one step further than the laws of other countries by allowing limited disclosure or the release of all non-secret information that can be segregated from the exempted information in any secret file.

Perhaps the most potent provision in the American law is the power of a judge to examine whether or not the Government has classified documents properly. If the judge believes that documents have been restricted erroneously, then a Department's decision to classify information can be overturned.

Following the 1974 amendment, citizens only need to 'reasonably describe' the documents they want to see, rather than request specific information. The American law also allows the public to inspect documents and charges only inspection fees per hour and for photocopies of documents.

The Act also provides for disciplinary action to be initiated against officials who have wrongly refused the release of documents or released exempted information. Government agencies and Departments also need to submit an annual report to Congress.

Indian lawmakers and civil society groups would find some of the earlier European and American practices familiar. In particular, the provision, in all these countries, that citizens do *not* have to provide a reason for accessing documents and the provision for the furnishing of information requests, which is practised in some of the Scandinavian countries and in the United States, have been adopted. The American law's provision for initiation of disciplinary action, inspection of documents and fees for inspection and photocopy have also found a place in the Indian legislation in some form or the other.

The Movement in India

In India, the movement to effectuate the right to information occurred in three areas:

- Legal pronouncements
- Civil society/ people's movement
- Government action

Constitutional derivation of the right to information: legal pronouncements

The Supreme Court has, in various judgements, held that the right to information is a part of the fundamental right to freedom of speech and expression under Article 19 (1) of the Constitution, since the right cannot be properly exercised if the people did not have the right to information.

The clearest enunciation of the fundamental right to information was seen in the Supreme Court ruling in the *State of U.P vs. Raj Narain* [(1975) 4 SCC 428] in which Justice K.K. Mathew said:

“In a Government of responsibility like ours, where all the 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. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security... They (the public) are entitled to know the particulars of every public transaction in all its bearing. The right to know which is derived from the concept of freedom of speech, though not absolute, is a factor, which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption”.²

In *S.P. Gupta vs. Union of India* [1982 SC (149)], Justice P. N. Bhagwati observed: “The concept of an open Government is the direct emanation from the right to know which

² Mander, Harsh and Joshi, Abha, *The Movement for Right to Information in India: People's Power for the Control of Corruption*: Commonwealth Human Rights Initiative, New Delhi, 1999

seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy an exception.”

The demand for right to information - a people's movement:

The Indian legislation on the right to information is the result of a popular grassroots struggle for effective governance. Movements to effectuate the right to work and livelihood of villagers discovered that public money meant for development projects was being routinely misappropriated. Workers were also being denied their wages and Government records (which were classified) were showing that these people had not worked on the projects.

It was this denial of information relating to the basic right to livelihood that resulted in the demand for access to information held by the Government. Once Government information was verified against work carried out on the ground for evidence of malpractices, a social audit of the expenditure incurred by the village Government was conducted.

The demand for inspection of local Government documents resulted ultimately in the demand for access to information held by the Government. Once Government information was verified against work carried out on the ground for evidence of malpractices, a social audit or *Jan Sunwai* (public hearing) of the expenditure incurred by the village Government was conducted. Increased awareness amongst the local villagers about their right to know about Government functioning forced local Government officials to open themselves up for public scrutiny.

A series of demonstrations and public hearings were held to show how local Governments had manipulated the records that affect wages and livelihoods of villagers. In 1996, a nation-wide network of senior journalists, lawyers, distinguished bureaucrats, academics and non Government organisation (NGO) activists was formed that vigorously

advocated the removal of the *Official Secrets Act, 1923* and the legislation of a strong right to information Act at the Centre.³

Starting from the time when States were operating right to information laws in a limited way, and during the period after the RTI Act 2005 was promulgated, there was a conspicuous upsurge in public response. This has manifested itself in terms of increasingly large number of questions for information hitherto kept secret. There was a corresponding movement within public authorities not to withhold information except for good reasons.

Thus a two-way movement occurred, i.e., the movement by the people to get information and the increased awareness among public functionaries that disclosure of information should be the norm and not the exception.

Contribution of the States

The following attempts to legislate the right to information were made at the State level:

The Press Council of India-National Institute of Rural Development, Hyderabad draft⁴

The National Campaign for Peoples' Right to Information (NCPRI) advocated the drafting of a model information access legislation for consideration by the Government. The Press Council of India (PCI), under the chairmanship of Justice P.B. Sawant, presented a draft model law to the Government in 1996, which was later revised and came out in the form of the PCI-National Institute of Rural Development (NIRD) draft in 1997.

This draft included a broad definition of what constitutes information (any act and/or record concerning the affairs of a public body; information that cannot be denied to the Parliament or State Assembly cannot be denied to the citizen) and what constitutes the

³ Mander, Harsh and Joshi, Abha, *The Movement for Right to Information in India: People's Power for the Control of Corruption*: Commonwealth Human Rights Initiative, New Delhi, 1999

⁴ Mishra, Neelabh, *A Battle Half Won-Right to Information*: 6 Combat Law, 2003

right to access that information (inspection, taking notes and extracts and receiving certified copies of the documents). The definition of what is a public body is broad, including not just the Government but also private bodies. Moreover, there were penalties for misinforming or providing wrong information, and provisions for appeal to courts against refusal or failure to provide information.

The restrictions placed on this right mainly pertained to the denial of information that affects the sovereignty and security of India, friendly relations with other States, public order, incitement of offence etc.

The Shourie Committee Draft Bill⁵

With the model right to information bill having been submitted to it by the NCPRI and the PCI in 1997, the then Government formed a Working Group on Right to Information and Promotion of Open and Transparent Government chaired by consumer activist late H.D. Shourie.

Though the Shourie Committee draft law published in 1997 extended the scope of the Act by bringing within its purview the judiciary and legislatures, there were more points going against it than for it. It narrowed the definition of public authorities, excluding the private sector and those NGOs that are not substantially funded or controlled by the Government, widened the scope of exemptions and had no penalty provisions for erring officials. However, given the rapid change in governments at that time, this Bill too did not materialise as legislation.

⁵ Mishra, Neelabh, *A Battle Half Won-Right to Information*: 6 Combat Law, 2003

States' right to information legislation

Even as efforts for a Central legislation on the right to information continued, several states had already begun enacting their own access to information laws. Activists did not consider these Acts very strong tools for enforcing accountability. Neither were these laws citizen friendly. Most of them neither had proactive disclosure provisions nor strict penalty clauses nor even a wide definition of what constitutes information. In some cases there was a long list of documents and information exempted from the laws.

Tamil Nadu Right to Information Act, 1997

Goa Right to Information Act, 1997

Rajasthan Right to Information Act, 2000

Delhi Right to Information Act, 2001

Maharashtra Right to Information Act, 2002

Assam Right to Information Act, 2002

Madhya Pradesh Right to Information Act, 2003

Jammu & Kashmir Right to Information Act, 2004 (this is the only state law that has remained in use even after the enactment of the national RTI Act since Jammu & Kashmir does not fall within the purview of the Central legislation).

Freedom of Information Act 2002

In 2000, the Centre brought out a draft *Freedom of Information (FOI) Bill*, which was a reworked version of the Shourie Committee Draft Bill. This Bill was referred to the Parliamentary Standing Committee on Home Affairs, which sought suggestions from the Government, civil society groups and individuals and then made its recommendations. However, very few of the recommendations of the Committee were incorporated in the *Freedom of Information (FOI) Act*, which was passed in 2002. The Act had some minor variations from the Draft FOI Bill.

Impact of Technology

Meanwhile, several governance-related changes had an inadvertent but beneficial impact on the right to information. The computerisation of information allowed easy access to it, faster and more transparent movement of files and led to a growing awareness that technological progress in offices is a force for transparency. Transparency is a by-product of the increased use of information technology in offices. India's is the only globalisation that has been driven by information technology and directly reaches the individual. The individual has the wherewithal to actualise this right in environments where the Government has been typically reluctant to part with information.

Right to Information Act, 2005

Though the FOI Act was passed by Parliament in 2002 and received Presidential assent in January 2003, it was not notified and, as a result, was never enforced.

When the United Progressive Alliance (UPA) came into power in May 2004, the struggle for the right to information received some encouragement in the form of the National Common Minimum Programme (NCMP), which promised to make India's information access legislation "more progressive, participatory and meaningful".

The National Advisory Council (NAC) was set up to fulfil this, among other things. Recommendations from the NCPRI were also received to strengthen the FOI Act 2002.

The RTI Bill was tabled in the winter session of Parliament in 2004. It was then referred to the Standing Committee on Personnel, Public Grievances, Law and Justice. The final report of the Standing Committee, which contained further amendments to the RTI Bill, was tabled in the Lok Sabha in March 2005. The *RTI Amendment Bill 2005* was passed by both Houses of Parliament in May 2005, and received Presidential assent in June 2005. The Act came into force within 120 days of its enactment – 12 October 2005.

The way forward

In an expanding economy, where the threat of the masses being alienated is ever present, it is very important to build bridges between the Government and the people, and remove the aura of mystique surrounding the former. In our democracy the people are an integral part of the system of governance, and they must also *feel* they are part of this system.

Governance improves with heightened trust between people and the Government. Trust improves with transparency. While the right to information exists in theory, the RTI Act gives a practical tool to realise this right.

A transparent and open Government increases the faith and trust of the public in its functioning, while at the same time reducing suspicion. This creates space for the free

flow of information, which allows citizens to participate in decisions taken in their interest.

Public officials and civil society should both take a keen interest in disseminating awareness about the rights of citizens and duties of public officials under this Act. In addition, Government officials need to be trained to better implement the Act and usher in good practices such as the electronic management of records. At the same time, members of the public and the media must continue to be active and vigilant in ensuring that the Act and the rights of citizens are not being violated.

This legislation is the result of an international movement of which India is a part. But, if we believe that the introduction of this law and the establishment of institutions, by themselves, can create the right environment for transparency in governance, we should be on our guard. There is still a long way to go. However, a solid and irreversible step has been taken.

CHAPTER 2: Key Roles and Responsibilities of the Central Information Commission

The *Right to Information (RTI) Act, 2005* is designed to set up a practical regime for citizens to access information available with public authorities, in order to promote transparency and accountability in their working.

Constitution of the Central Information Commission

The Act provides for the constitution of the Central Information Commission (CIC) to be responsible for the implementation of the Act, exercising powers conferred on it under Section 18 of the Act. The CIC, under this Section, consists of one Chief Information Commissioner, who will head the Commission, and such number of Central Information Commissioners, as may be deemed necessary, but not exceeding ten.

On 26 October 2005, Mr. Wajahat Habibullah became India's first Chief Information Commissioner. Mr. Habibullah, former Secretary, Ministry of Panchayati Raj, Government of India, was administered the oath of office by President A P J Abdul Kalam. Four other Information Commissioners were subsequently appointed: Ms. Padma Balasubramanian, former Secretary, Department of Posts, Dr. O P Kejariwal, former Chief Executive Officer of Prasar Bharati, Professor M M Ansari of the Jamia Hamdard University, and Mr. Anugraha Narayan Tiwari, former Secretary, Ministry of Personnel, Pension and Public Grievances.

Oath Taking by CIC/ICs

Mr. Wajahat Habibullah Chief Information Commissioner	26 October 2005
Ms. Padma Balasubramanian Information Commissioner	26 October 2005
Dr. O. P. Kejariwal Information Commissioner	27 October 2005
Professor M. M. Ansari Information Commissioner	31 October 2005
Mr. A. N. Tiwari Information Commissioner	26 December 2005



Mr. Wajahat Habibullah takes oath on 26 October 2005

Powers and Functions of the Central Information Commission

- The CIC is empowered to receive and inquire into complaints from any person relating to access to information under the control of public authorities and to decide appeals against the decisions of designated appellate officers.

- The Commission shall impose penalties on erring Central Public Information Officers and recommend disciplinary action against those who have, without any reasonable cause, denied access to information under the provisions of the Act or deprived a citizen of his/her right to access information with public authorities in a malafide manner. The quantum of penalty liable to be imposed is Rs. 250 each day till the application is received or information is furnished subject to the total amount not exceeding Rs. 25,000.
- The Commission has powers to require the public authority to compensate the complainant for any loss or other damage suffered.
- The decision of the Commission on an appeal is binding and is not subject to further appeal in a court of law.
- The Commission may make recommendations to public authorities not conforming to the provisions or the spirit of the Act, specifying the steps which, in its opinion, they ought to take for promoting such conformity.
- While inquiring into a complaint under Section 18, the CIC has the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, for the following purposes:
 - summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
 - requiring the discovery and inspection of documents;
 - receiving evidence on affidavit;
 - requisitioning any public record or copies thereof from any court or office;
 - issuing summons for examination of witnesses or documents; and
 - any other matter which may be prescribed
- The Commission may, during the inquiry into any complaint, examine any record under the control of the public authority, and no such record may be withheld from it on any grounds.
- The Commission shall recommend to the Government every year, reforms on any “matter relevant for operationalising the right to access information”.



The Commission's first hearing held on 23 December 2005. Seated from left to right are: Mr. P. K. Gera, Joint Secretary and Registrar, and Information Commissioners, Mr. M. M. Ansari, Ms. Padma Balasubramanian and Mr. O. P. Kejariwal



(Seated from left to right) Respondents from the Delhi Development Authority and the appellant Mr. Sarabjit Roy at the Commission's first hearing

Functioning of the Information Commission:

- The Central Information Commission has been set up in the Ministry of Personnel, Pension and Public Grievances, Delhi. With the approval of the Central Government, other offices of the Commission can be established in other parts of the country.
- The Government has sanctioned 72 posts for the Commission including a Chief Information Commissioner and ten Information Commissioners. Of these, 31 were filled in the first six months of the implementation of the Act. Since the Commission was asked to outsource the administrative tasks, it procured services relating to data entry and housekeeping from a manpower service provider who placed 11 data entry operators and six peons at its disposal.
- The Commission exercises its powers without being subjected to directions by any other authority.
- The Chief Information Commissioner enjoys complete financial and administrative powers of a Department of the Government of India except in matters relating to the creation of posts, re-appropriation and writing-off losses for which it needs the specific concurrence of the Ministry of Finance.
- The general superintendence, direction and management of the affairs of the Commission are vested in the Chief Information Commissioner, who is assisted by the Information Commissioners.
- The Commission decided that all hearings would be held by at least two Information Commissioners jointly. Later, it was decided to leave it to the individual Information Commissioner to take a view on issuing orders singly, depending upon the complexity of the case.
- The Commission has made use of modern techniques such as video conferencing for hearings where the Public Information Officer and the applicant are both located outside Delhi.

PICTURE 4: CIC WITH ICs

PICTURE 5: CIC AND ICs WITH ALL THE MEMBERS OF THE COMMISSION

Reporting Obligations

The Act mandates the CIC to submit Annual Reports to the Parliament. The Commission has decided to submit its report to the Parliament at the end of each financial year.

Other Activities

- The Commission has proposed to set up a National Institute of Accountability and Transparency. This Centre would be an extended arm of the Commission, functioning as a single point of contact for undertaking research on accountability and transparency issues and setting up a database of best practices undertaken around the world in this regard.
- The Commission is also considering the possibility of setting up a call centre for providing guidance to the general public, and senior citizens in particular, so that they do not have to run from pillar to post for submitting RTI applications.
- The Commission has identified 11800 sq ft of office space in the August Kranti Bhavan at Bhikaji Cama Place which it will take on rent.

PICTURE 6: PICTURE OF CURRENT BUILDING

PICTURE 7: PICTURE OF IDENTIFIED OFFICE SPACE IN AUGUST KRANTI BHAVAN

CHAPTER 3: Proactive Disclosure- Strategies for Success

“It shall be a constant endeavour of every public authority...to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information”

[Section 4 (2) RTI Act 2005]

I

The Government’s duty to publish information proactively is a natural corollary of the public’s right to information and forms the *sine qua non* of transparent and accountable governance. It is this provision that makes Section 4 – which requires the Government to publish all information except that which the law permits to be kept secret – the most pivotal element and forward-looking clause of the RTI Act. The objectives of the Act would be achieved in the truest sense when Section 4 is implemented in letter and spirit. This is a landmark achievement of the Government in more ways than one.

- It fundamentally restructures the debate from what should be revealed to what must be kept secret and undoubtedly reflects the potency of India’s vibrant democracy:

Section 4 mandates all public authorities to place in the public domain – electronically and by other means such as notice boards, newspaper announcements and inspection – information that would provide an overall picture of the public authority. This includes information about its structure and functioning, decision-making procedures, budgets, particulars about subsidy programmes and contracts granted, and mechanisms for public participation.

- It is one of the few pieces of legislation that has made the most of the strides that India has made in the area of information technology by incorporating the use of computers and the internet to disseminate information:

Section 4 (2) mandates that information disclosed under it should be done using various means of communication *including* the internet, so that the public can

keep the use of this Act to obtain information to the minimum. Section 4 (4) specifically requires that information must be “easily accessible to the extent possible in *electronic format*” with the Public Information Officer, i.e., on the website and in other electronic mode such as floppies, diskettes etc.

- Section 4 is strengthened by the penalty powers vested in the Central Information Commission, which can be invoked against those information officers who violate the basic provisions of the Act. Such violation includes not proactively publishing the information specified under the Section both electronically and by other means:

The Central Information Commission can, under Section 19 (8) (a) (iii), require every public authority to “publish certain information or categories of information” under the Act. Should the public authority not comply, Section 19 (8) (c) gives the Commission the power to “impose any of the penalties provided under this Act”.

II

The RTI Act is among the strongest pieces of legislation in the world providing citizens access to public documents. Indian law makers and civil society had studied the experience of other countries and the Act has incorporated best practices from information access laws of countries as diverse as the United States, Sweden, South Africa, United Kingdom, Mexico, Canada and even the Pakistan *Freedom of Information Ordinance 2002*.⁶

The Mexican Freedom of Information Act is particularly relevant in the context of Section 4 since it mandates a broad proactive disclosure regime for its public authorities. The practical guidelines in Article 7 of the Mexican legislation have been incorporated into Section 4 of the Indian Act. The Pakistan Ordinance is also significant since it has

⁶ *Detailed Analysis of the Indian Freedom of Information Act 2002 & Recommendations For Amendments*: Commonwealth Human Rights Initiative, New Delhi, 2004

provided guidance on the computerisation of records and management of information systems.⁷

Though the Indian Act has not taken any best practices from the Hungarian information access law, the latter's provision regarding data of public interest is informative: The Hungarian *Protection of Personal Data and Public Access to Data of Public Interest* seeks to create a transparent State by specifying the data that lies in the sphere of public interest and which the public has access to, unless defined as a State or service secret or restricted by a legislation. Public interest data includes information related to the activities of public organs, in particular, data relating to the "sphere of authority, competence, organisational structure, types of data in (the) possession and the legal rules applicable to (the) operation" of public organs. In addition, "the names and positions of persons acting within the competence of these organs" are also classified as public interest data unless restricted otherwise by an Act.⁸

While the investigative and decision-making powers of the Central and State Information Commissions have drawn from the best practice standards of the Canadian, British and South African access laws, India is the first country whose access law is armed with a penalty provision for erring officials. The practice of imposing a fine was followed in some of the State-level access laws prior to the enactment of the RTI Act. The most notable among these was Section 12 of the Maharashtra Right to Information Act, 2002 under which an information officer could be fined Rs. 250 for each day's delay in providing requested information. Further, a fine of Rs. 2,000 could be imposed where incorrect or incomplete information was knowingly given. Both these fines were to be drawn from the salary of the erring officer⁹.

⁷ Ibid

⁸ http://www.privacy.org/pi/countries/hungary/hungary_privacy_law_1992.html

⁹ *Detailed Analysis of the Indian Freedom of Information Act 2002 & Recommendations For Amendments*: Commonwealth Human Rights Initiative, New Delhi, 2004

III

Section 4 (c) and (d) are very detailed provisions requiring public authorities to “publish all relevant facts while formulating important policies or announcing decisions which affect the public” and “provide reasons for its administrative or quasi-judicial decisions to affected persons”.

It should be possible for citizens to understand how a policy is formulated and what matters are taken into consideration while doing so. At the very minimum, information regarding the procedures and guidelines followed in formulating a policy or programme, the budgetary considerations involved, the names and designations of nodal officers and any identifiable outputs or outcomes that are expected should be in the public domain.

The significance of Section 4 (c) can be seen in cases of land acquisition, where land is taken by the State for development projects or commercial purposes such as building factories.

Similarly, affected employees of a public authority have a right to know how decisions regarding promotions, postings and other personnel-related matters are taken. Likewise, when a public authority takes an administrative or quasi-judicial decision, the affected person has the right to know the rationale behind the decision.

Section 4 (d) allows the fulfillment of this right by mandating that all public authorities place these decisions in the public domain, and this may be extended to mean that the full body of the decision be proactively disclosed.

However, compliance has been negligible. Public authorities need to show more commitment not only in spirit but also in practice by publishing information under Section 4 on their website and through other reasonable means. Public authorities cite two main reasons for the general lack of compliance with Section 4:

- Several organisations are reluctant to accept themselves as public authorities since they are unclear about who is the final authority that would declare a public authority.

This matter can be settled by the Central Government once it clarifies, through a general circular or order, who is a public authority. The Centre can advise competent authorities to issue clear definitions of public authorities under their control for the general information of the public.

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- The lack of budgetary resources, especially in the panchayats, delays the efforts of public authorities to electronically publish data

In 2002, the Government of India decided to provide 100,000 community information centres in 600,000 villages by 2007. A budget of Rs. 23,000 crore has been placed with the Department of Information Technology in the Ministry of Communications & Information Technology to implement the scheme within this deadline. The Commission urges the Government to give this top priority if its intention is to see that every citizen obtains access to information. In addition, budgets have to be sanctioned for other public authorities as well. Public authorities must make budget provisions and create a framework to advance towards an efficient records management system. This is a huge task that will be time consuming, given the current manner of storing information.

IV

Various problems hamper the effective furnishing of requested information. These include the monetary cost of acquiring information, including application fees, charges for reproducing information as well as the ambiguity regarding how much information one can ask for in a single application.

The idea behind proactive disclosure becomes more relevant in this context. Some examples of good proactive disclosure of information practices by other countries can help augment the movement towards more efficient and effective disclosure practices in India (See Box)

Some good practices

- The *UK Freedom of Information Act, 2000*, makes it mandatory for public authorities to create and adapt publication schemes, which are approved by the Information Commissioner. The publication scheme is a document that lays down the categories of information that a public authority is to disclose proactively. Ideally, it will include a short description of each category (for easier identification of location of documents), the format(s) in which the information is available, the cost of accessing and reproducing it *and* how often the information is to be updated.
- The *Freedom of Information (Scotland) Act, 2002* makes it mandatory for a public authority to adopt and maintain a publication scheme approved by the Information Commissioner, which the public authority would need to review from time to time. The nature of the publication schemes is very similar to that of the UK and includes the illustration of classes of information that the authority publishes, the manner or form in which the public can expect to find each class of information, and whether the information would be available free of charge or on payment of a fee.
- The US Department of Veteran Affairs, which processed the most number of information requests in 2005, has gone beyond the affirmative disclosure provisions of the *US Freedom of Information Act* (amended in 2002) and posts on its website even information that does not fall under this section of the Act, but which can be published since it is not exempt, in order to help clear the backlog. The Department has also posted frequently requested information on a centralised tracking system so that such information can be easily identified and the requisitioner can be guided to it. This also saves information officers precious time in compiling this information.
- The Canadian Government has made it mandatory under the *Canadian Access to Information Act, 1983* for its Government agencies to disclose financial and human resource-related information by making this information available *suo motu* on their websites. The three areas that are disclosed proactively (subject to exemptions under the information Act and the *Privacy Act*) are the travel and hospitality expenses for selected Government officials, contracts entered into by the Government for amounts over \$10,000 and reclassification of occupied positions. In addition, information regarding grants and contributions of over \$25,000 is also to be proactively disclosed.
- The *Mexican Freedom of Information Act, 2003* mandates public authorities to upload proactively disclosed information on the internet, so that an overall picture of the authority is available. This reduces the need of individuals to file information requests regarding the general functioning of a public authority. Information that is requested by one applicant is uploaded on the website and thus available to the general public.
- The *South African Promotion of Access to Information Act, 2000*, which extends to private bodies as well, mandates the Human Rights Commission to compile a guide on how to use the Act, in each official language. The guide has to be updated every two years. Contact details of all information officers of all public authorities, including electronic mail addresses, are made available in the telephone directory used by the public. Every private body also needs to publish most of the above information. [*References at end*]

Electronic Management of Records:

Every public authority shall maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

[Section 4 (1) (a) RTI Act 2005]

For an information access regime to be truly successful, Governments should collate and store efficiently and effectively, records of its structure and functioning. Only then would it be able to disclose information to citizens who seek it.

If the managing and indexing of records are neglected, Government departments would be unable to locate important information, either to meet the needs of citizens or even for simple auditing or accounting purposes. In such a situation, it would not be possible to effectively implement access to information legislation.

Records Management in India- what the procedures and guidelines say:

It is critical to put strong procedures and guidelines in place that would help lay the foundation for the implementation of a useful records management system. Though it would be impractical to expect uniformity in practices across public authorities, given the essential differences in the nature of their functioning, procedures and guidelines help to attain some consistency in record keeping practices. This consistency would revolve around ensuring that public interest is served when it comes to protecting, preserving and eventually destroying records that describe the activities of the Government.

The first step of formulating procedures and guidelines has already been taken, with the Government recognising the need for filing or indexing its records, as is evident from the introduction to the file numbering system in the *Central Secretariat's Manual of Office Procedure, under the Ministry of Personnel, Public Grievances and Pensions, Department of Administrative Reforms & Public Grievances vide Para 93:*

“A proper file numbering system is essential for convenient identification, sorting, storage and retrieval of papers.”

The Government uses two file numbering systems for indexing and cataloguing its records, one based on functions and one on subject classification. Taking note of the need for electronic filing, the manual specifies that “in a computer environment file numbering will be done electronically” for both these systems.

The public authority is also expected to maintain a “file register”, which is a record of files opened during a calendar year. Even the movement of files will be recorded electronically at every stage in a computer environment.

The employees in charge of maintaining the movement of papers received within a public authority or handing them over to a higher official within that authority would be the personal staff of officers of the rank of Deputy Secretary and above. In the desk pattern, the desk official’s personal assistant or stenographer would be responsible for the same activities.

The practice of record management in the Government of India involves recording, retention, retrieval and weeding out of papers/files and nominating an officer not below the level of a Section Officer as Departmental Records Officer (DRO) to be in charge of overall records management

Records are divided into three categories:

- **Category A** records for permanent preservation and microfilming.
- **Category B** records for permanent preservation for administrative purposes but not for microfilming.
- **Category C** records to be kept for a specified period, not exceeding 10 years.

The *Manual* notes that files need to be indexed at the time of their recording. The records retention schedule must be reviewed at least once every five years.

The Government has recognised that with the transition towards e-Government, there is an increasing use of computers for storing data as well as for dissemination of information. Para 154 in the *Manual* specifies:

“With a gradual shift to automated environment in Central Secretariat offices, there exists a case for adopting a completely electronic support system incorporating the basic procedures enshrined in the Manual by any Department... The system will also ensure easy storage, processing and quick retrieval of information at any point of time and by all relevant functionaries, thereby ensuring increase in overall efficiency and productivity of that Department.”

The *Manual* indicates that computer hardware and matching software would be installed in all sections in a public authority. Interestingly, it also stipulates that employees who would be entrusted with the responsibility of operating the computers would be trained to ensure *“hundred per cent data entry, to keep daily backups, generating periodic reports, taking hard copies where necessary, and reviewing progress of working on the system.”*

¹⁰

The action to be taken to digitise Government records is clearly laid out in Para 155 of the *Manual*. This includes diarising and movement of receipts, updating receipt status as and when it changes, linking the receipt to a file, opening of new files, recording movement of files, final disposal of files, linking and delinking of files, review and monitoring pending files/ receipts, timely disposal of files/receipts, despatching the letters/files through central registry or directly, retrieval of information through self-query, automatic generation of reports, and overall records management.

Though the *Manual* states that digitising records would make data available for further analysis and records management, and make the process of storing and retrieval of records much easier, a majority of public authorities in India is still to put in place an

¹⁰ Vide Para 154

efficient electronic records management system. Unless they take the initiative to computerise their records, any effort at measuring the efficiency of digital records management and its contribution towards making the information legislation operational, would be futile.

The Bhoomi Project

The Revenue Department of Karnataka has digitized and put online its land records for their electronic management.

Bhoomi arose out of the need to create a system that would prevent as far as possible the inaccuracies that marred the manual system of maintaining land records. This is a Central scheme implemented by the state Revenue Department through its Deputy Commissioners of districts. The land records of 177 *taluks* were computerised.

Under Bhoomi, land records are updated and changes made online so that when farmers request a record of rights, tenancy and crops (RTC), the information is current. The software incorporates the updation of land ownership details in its business process itself so that there is no lag in the updation method. This system allows officials to add other information to that which already exists.

The software allows officials to see all pending work in their inbox, provides enough inbuilt help to recover data from a crashed system, and has an inherent state of the art security system to protect the system and records from any sort of manipulation.

Today farmers can directly access 20 million digitised land records that were earlier maintained by 9000 village officials manually. *[Reference at end]*

An efficient records management system is a prerequisite for an accountable and transparent Government that is accessible to the public. Public authorities must not forget that without effective records management, it is pointless to have an information access legislation that guarantees the public right to government information but not access to it, due to the lack of proper documentation of this information, manually or electronically!

Recommendations for effective electronic management:

In order to achieve successful management of records, public authorities could:

- Be transparent about the weeding out process they follow within their organisation by uploading the rules regarding the same on their website.
- Scan, store and index all papers, for end users, i.e. the public, beginning with those that are mandatory to be disclosed under Section 4.
- Create a built-in system for electronically storing, indexing, searching and referencing information so that records can be retrieved after any period of time, with ease.
- Manage e-mails, as they are a record of the day-to-day activities of an organisation.
- Ensure that records management policies and procedures are compatible with the RTI Act. Records managers should create an inventory of all existing records in the organisation, both electronic and paper-based, and identify documents on a priority-basis for gradually incorporating into the records management system. A framework must be created for the introduction and smooth transition from a paper-based system to an electronically managed system of keeping and preserving records.
- Test a newly created system on a pilot basis, before deciding whether to replicate it or not, depending on the success or failure of the experiment. The Bhoomi electronic records management of land records in Karnataka, though a successful project, was first tested on a pilot basis in five sub-districts before expanding to other districts of the State.
- Set a target to convert existing and newly created public records to electronic records. Milestones may be decided for different stages of transition.
- Re-evaluate existing office norms that govern the discharge of functions in an organisation and change these norms to meet the requirements of a transition towards the electronic management of records

Some websites that can provide useful tips to understand and make the transition towards effective records management

- United States National Archives Records Management: <http://www.archives.gov/records-mgmt/>
- United Kingdom National Archives: <http://www.nationalarchives.gov.uk/recordsmanagement/>
- United Kingdom Records Management Society: <http://www.rms-gb.org.uk/>
- National Archives of Scotland: <http://www.nas.gov.uk/recordKeeping/recordsManagement.asp>
- The New South Wales Government's Archives and Records Management Authority: http://www.records.nsw.gov.au/recordkeeping/records_management_3533.asp
- International Records Management Trust: <http://www.irmt.org/>

Reference:

1. *Central Government Publication Schemes Good Practices: The Campaign for Freedom of Information*, 2004
http://www.cfoi.org.uk/pdf/ps_report.pdf#search=%22UK%20Central%20Government%20publication%20scheme%22
2. National Archives of Scotland Freedom of Information Publication Scheme
<http://www.nas.gov.uk/foi/publicationScheme1.asp>
3. Freedominfo.org http://www.freedominfo.org/countries/united_States.htm
4. *Freedom of Information Act Implementation Plan under Executive Order 13392, Improving Agency Disclosure of Information: US Department of Veteran Affairs*
http://www.va.gov/oit/cio/foia/documents/Plan_Clean_6_13_06.pdf#search=%22US%20department%20of%20veteran%20affairs%20proactive%20disclosure%22
5. Department of Justice, Government of Canada <http://www.justice.gc.ca/en/dept/disclosure.html>
6. Mendel, Toby, *Global Trends in the Right to Information: A Survey of South Asia: Article 19*, Centre for Policy Alternatives, Commonwealth Human Rights Initiative, Human Rights Commission of Pakistan, 2001
7. <http://righttoinformation.gov.in/>
8. <http://www.revdept-01.kar.nic.in/Bhoomi/Home.htm>
9. www.nationalarchives.nic.in
10. <http://www.nationalarchives.gov.uk/recordsmanagement/>

CHAPTER 4 Overview of Implementation of the RTI Act 2005

Section 25 of the RTI Act entrusts the Central Information Commission (CIC) with the responsibility of monitoring the implementation of the Act and preparing a report on the same during each year. A copy of this report has to be forwarded to the Central Government which, under Section 25(4), is expected to place this report before Parliament. Each Ministry or Department is required to collect and provide relevant information in relation to the public authorities within its jurisdiction to the Commission for the preparation of this report and comply with the requirements concerning the furnishing of that information and copying records for purposes of this Section. The report is mandated to provide the following information for the year in which it is prepared:

- Number of requests received by each public authority
- Number of decisions where applicants were not entitled to access the documents pursuant to their requests, the provisions of the Act under which these decisions were made and the number of times such provisions were invoked.
- Details of disciplinary action taken against any officer in respect of administration of this Act.
- Amount of charges collected by each public authority under this Act.
- The number of appeals referred to the Central Information Commission for review, and the nature and outcome of these appeals.
- The details to indicate efforts made by the public authorities to administer and implement the spirit and intention of this Act.
- Suitable suggestions for reform, including those required for development, improvement, modernisation, reform or amendment of the Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

The Commission requested the Secretaries of all Ministries and certain independent apex-level offices to provide such information, but soon realised that this could be a Herculean task, due to the limited resources at its command. The task was accomplished with the

assistance of the National Informatics Centre (NIC), which designed and developed software that enabled Ministries to place the above information on the website of the Commission.

The RTI Annual Returns Information System was made accessible to the concerned Ministries/Departments/independent apex-level offices from the CIC's website to enable them to feed the data related to the annual returns of the public authorities attached to/falling under them. They were given facilities for using a password to access the website and upload their data. Several reminders were issued as a number of public authorities were not prompt in sending the Ministries these details.

The RTI Annual Returns Data Base (RARDB) covered the public authorities falling within the jurisdiction of 47 Ministries (some without any subordinate Departments under their control), two independent Departments (Department of Atomic Energy and Department of Space) and seven apex-level offices whose administrative Ministry the Commission could not determine – office of the Honourable President and Vice-President, the Prime Minister's Office (PMO), Cabinet Secretariat, Comptroller & Auditor General, Planning Commission and Election Commission.

For the purpose of this report, the Commission had left it to the Ministries to provide data for public authorities (as interpreted under Section 2(h) of the Act) within their jurisdiction. As a result, some Ministries had placed the data of each of their attached/subordinate office as a separate public authority, while some clubbed them together and placed an overall picture of such offices on the website. The Ministry of Personnel, Pensions and Public Grievances is urged to issue guidelines for the Ministries to declare the public authorities under Section 2(h), so that their data can be collated uniformly for presenting in the Annual Report.

In order to enable citizens to have access to this data in respect of all offices of public authorities, the Commission would recommend that each public authority should place the above-mentioned details and its analysis for their various offices separately in their

annual report and place them on their website as well. The Commission has incorporated in this report the data that the Ministries had submitted to it on the website, for which it bears no responsibility for authenticity, which rests with the concerned Ministry/ Department.

Since the task of data collection was huge, the Commission engaged the services of M/S Centre for Civil Society (CCS), an independent think tank for collecting the information and preparation of the annual report under the guidance of the Commission.

The details of Ministry-wise and public authority-wise “Abstract of Annual Returns” are tabulated in **Annex 1**. The Commission is yet to receive a comprehensive list of all public authorities from the Government. But on the basis of information on public authorities collected from various sources, a list of those (Ministry-wise listing) that have not filed their Annual Returns with the Ministry is tabulated at **Annex 2**. *An examination of the data contained in the RARDB indicates that Ministries have 938 public authorities and submitted details under Section 25 for 837 authorities.* The Commission is pleased to report that almost 90 per cent of public authorities have submitted their annual returns to their respective Ministries. It may further be noted that the listed public authorities comprise a wide spectrum of organisations and offices, ranging from corporations, companies, societies, boards, statutory bodies, attached and subordinate offices to independent apex-level offices, Departments and Ministries.

The Ministry-wise consolidated Statement on the requests received by various public authorities and fees charged have been placed at **Annex 3**. The top five Ministries that received 54.5 per cent of total RTI requests are indicated in **Table 1**.

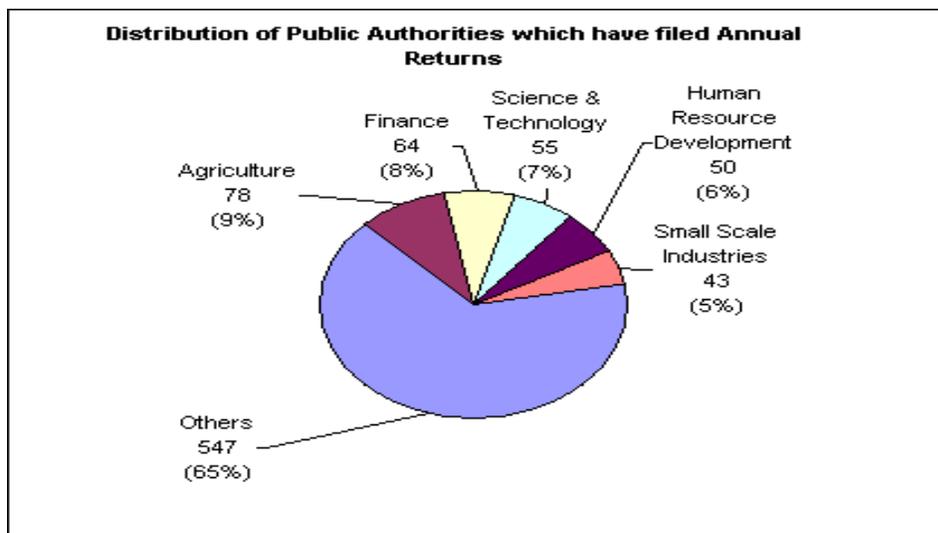
Table 1: - Top five Ministries in terms of RTI requests received in 2005-06

S.No.	Ministries	Total number of public authorities	Number of authorities who have filed Annual Return	Number of RTI requests received
(1)	(2)	(3)	(4)	(5)
1	Ministry of Finance	69	64 (92.75)	4770
2	Ministry of Railways	11	11 (100)	2665
3	Ministry of Urban Development	15	15 (100)	2504
4	Ministry of Communications & Information Technology.	11	11 (100)	1722
5	Ministry of Shipping, Road Transport & Highways	32	29 (90.62)	1680

Note: figures in parenthesis indicate percentage of total authorities

An analysis of the distribution of public authorities among the various Ministries (**Chart 1**) reveals that those under five Ministries, viz., Ministries of Agriculture, Finance, Science & Technology, Human Resource Development and Small Scale Industries together contributed to 35 per cent of the total public authorities in the Report.

Chart 1: Distribution of public authorities which have filed annual returns



The Ministry-wise consolidated Statement on the requests rejected, the number of times various provisions were invoked while rejecting the requests received by its public authorities and fees charged is placed at **Annex 4. Table 2** shows the top five Ministries in terms of the number of requests rejected with the provisions invoked for rejections.

Table 2: - Top five Ministries in terms of number of times requests were rejected under various Sections in 2005-06

S.No.	Ministry/Independent Department	Number of requests received	Number of requests rejected	Number of times requests were rejected under various sections				
				Section 8	Section 9	Section 11	Section 24	Others
(1)	(2)	(3)	(4)					
1	Ministry of Finance	4770	1748 (36.65)	1019	17	63	11	884
2	Ministry of Home Affairs	1316	377 (28.65)	338	0	5	18	31
3	Ministry of Petroleum	1012	256	191	0	3	3	65

	& Natural Gas		(25.3)					
4	Ministry of Communications & Information Technology	1722	136 (7.9)	114	2	8	0	31
5	Ministry of Personnel, Public Grievances & Pensions	1038	96 (9.25)	37	0	0	0	59

Note: figures in parenthesis indicate percentage of requests received

The data submitted by the Ministries revealed that the total number of requests rejected by some public authorities exceed the sum total of requests rejected under various exemption clauses. This implies that in the residual number of cases, some public authorities rejected the application without invoking any of the exemption clauses the RTI Act provides.

A list of public authorities, which have received at least 50 RTI requests but rejected none is shown in **Table 3**.

Table 3: List of public authorities which have received at least 50 requests but rejected none

S. No.	Public Authority	Number of requests received	Ministry/Department
(1)	(2)	(3)	(4)
1	Delhi Development Authority	1988	Ministry of Urban Development
2	Hindustan Shipyard Ltd.	1203	Department of Shipping
3	Ministry of Social Justice & Empowerment	152	
4	Department of Tourism	120	Ministry of Tourism & Culture
5	National Highways Authority of India (NHAI)	118	Department of Road Transport & Highways
6	University of Delhi	114	Department of Secondary & Higher

			Education
7	Geological Survey of India	106	Ministry of Mines
8	Employees State Insurance Corporation	106	Ministry of Labour & Employment
9	Department of Health & Family Welfare	101	Ministry of Health & Family Welfare
10	Department of Agriculture & Cooperation	100	Ministry of Agriculture
11	Department of Legal Affairs	69	Ministry of Law & Justice
12	Western Coalfields Limited	64	Ministry of Coal
13	President's Secretariat	63	
14	Directorate General of Shipping DG (S)	59	Department of Shipping
15	Central Silk Board	56	Ministry of Textiles
16	Department of Road Transport & Highways	55	Ministry of Shipping, Road Transport & Highways
17	Central Government Industrial Tribunal-cum-Labour Court, Lucknow	50	Ministry of Labour & Employment

Prominent Ministries, which have received 3 per cent of the total RTI requests or more are shown in **Table 4**.

Table 4: - Prominent Ministries receiving 3 per cent or more of total requests

S.No.	Ministry/Independent Department	Number of requests received (% of total requests)	Prominent Public Authorities			
			PA-I		PA-II	
			Name of PA	Number of requests (% of total requests for Ministry)	Name of PA	Number of requests (% of total requests for Ministry)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Ministry of Finance	4770 (19.5%)	CBEC	1186 (24.9%)	CBDT	846 (17.7%)
2	Ministry of Railways	2665 (10.9%)	Ministry of Railways	2582 (96.9%)	Container Corporation of India Ltd.	42 (1.6%)
3	Ministry of Urban Development	2504 (10.2%)	Delhi Development Authority	1988 (79.4%)	Land and Development Office	228 (9.1%)
4	Ministry of Communications & Information Technology	1722 (7%)	Department of Posts	1209 (70.2%)	Bharat Sanchar Nigam Limited	299 (17.4%)
5	Ministry of Shipping, Road & Transport Highways	1680 (6.9%)	Hindustan Shipyard Ltd.	1203 (71.6%)	National Highways Authority of India (NHAI)	118 (7%)
6	Ministry of Home Affairs	1316 (5.4%)	Delhi Police	1032 (78.4%)	Department of Home	155 (11.8%)

7	Ministry of Personnel, Grievances & Pensions	1038 (4.2%)	Central Vigilance Commission	414 (39.9%)	Department of Personnel & Training	289 (27.8%)
8	Ministry of Petroleum & Natural Gas	1012 (4.1%)	Hindustan Petroleum Corporation Limited (HPCL)	236 (23.3%)	Indian Oil Corporation Limited (IOCL)	188 (18.6%)
9	Ministry of Human Resource Development	896 (3.7%)	Indira Gandhi National Open University (IGNOU)	300 (33.5%)	Kendriya Vidyalaya Sangathan	245 (27.3%)
10	Ministry of Coal	809 (3.3%)	South Eastern Coalfields Ltd.	659 (81.5%)	Western Coalfields Limited	64 (7.9%)

Note: PA-I and PA-II are the top two public authorities in each Ministry with the highest percentage of requests received by that Ministry.

Ministries which used various clauses of the RTI Act the maximum number of times to deny information are shown in **Table 5**. Of the 24,436 RTI requests received in 2005-2006, Ministries have reported that 3387 (13.9 per cent) requests were rejected. A comparison of the rates of rejection among the Ministries (**Annex 4**) reveals that the Ministry of Defence and its attached public authorities together had the highest average rate of rejection (48 per cent), followed by the Ministry of Finance and its attached public authorities (37 per cent).

Table 5: - Maximum use of exemption clauses by Ministries (including all public authorities)

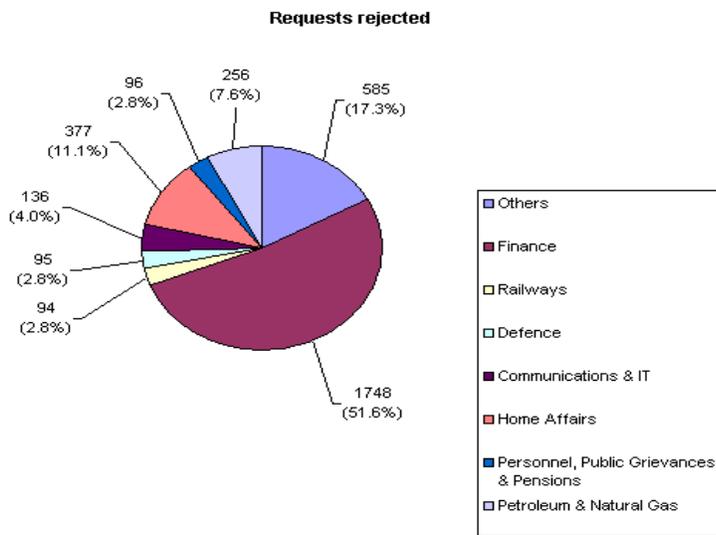
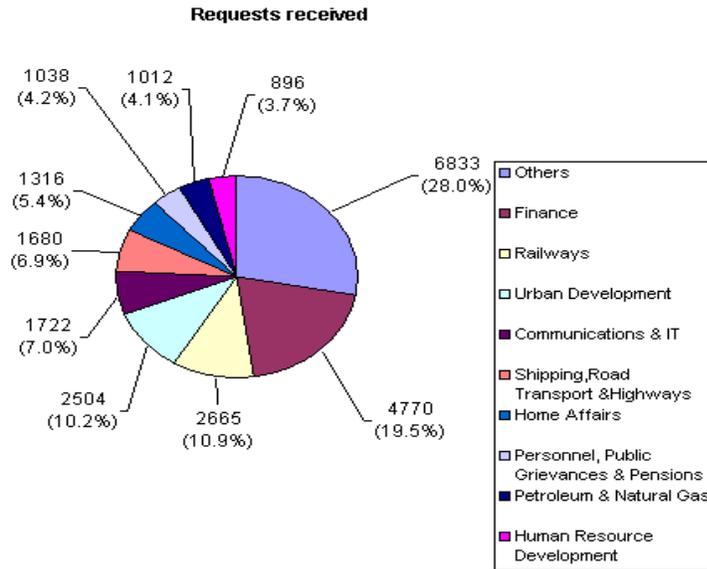
Exception Clause	Total number of times invoked by all public authorities together	Prominent Ministries whose public authorities used exemption clauses			
		Ministry-I		Ministry-II	
		Name of Ministry/Independent Department	Number of times invoked	Name of Ministry/Independent Department	Number of times invoked
(1)	(2)	(3)	(4)	(5)	(6)
Section 8 (1) (a)	37	Ministry of Finance	11 (29.7%)	Ministry of Home Affairs	5 (13.5%)
Section 8 (1) (b)	49	Ministry of Finance	20 (40.8%)	Ministry of Home Affairs	8 (16.3%)
Section 8 (1) (c)	4	Ministry of Commerce & Industry	2 (50%)	Ministry of Communications & Information Tech.	1 (25%)
Section 8 (1) (d)	525	Ministry of Finance	343 (65.3%)	Ministry of Petroleum & Natural Gas	60 (11.4%)
Section 8 (1) (e)	265	Ministry of Finance	112 (42.3%)	Ministry of Petroleum & Natural Gas	66 (24.9%)
Section 8 (1) (f)	3	Ministry of Labour & Employment	2 (66.7%)	Ministry of Defence	1 (33.3%)
Section 8 (1) (g)	193	Ministry of Home Affairs	138 (71.5%)	Ministry of Finance	29 (15%)

Section 8 (1) (h)	386	Ministry of Home Affairs	143 (37%)	Ministry of Finance	123 (31.9%)
Section 8 (1) (i)	86	Ministry of Finance	36 (41.9%)	Ministry of Communications & Information Technology	16 (18.6%)
Section (8) (1) (j)	719	Ministry of Finance	345 (48%)	Ministry of Railways	53 (7.4%)
Section 9	27	Ministry of Finance	17 (63%)	Ministry of Commerce & Industry	7 (25.9%)
Section 11	103	Ministry of Finance	63 (61.2%)	Ministry of Communications & Information Tech.	8 (7.8%)
Section 24	40	Ministry of Home Affairs	18 (45%)	Ministry of Finance	11 (27.5%)
'Others'	1314	Ministry of Finance	884 (67.3%)	Ministry of Petroleum & Natural Gas	65 (4.9%)

Note: Figures in parenthesis indicate the proportion of times a clause was invoked by a public authority out of the total number of times it was invoked by all public authorities. Ministry-I and Ministry-II refer to the top two Ministries invoking particular exemption clauses of the RTI Act

Chart 2 shows the distribution of the requests received (24436) and rejected (3387). The public authorities under the Ministry of Finance received almost 20 per cent of the total RTI requests, but they rejected 51.6 per cent of the total requests. This disproportionately high ratio of rejection calls for introspection and training of the staff of public authorities under this Ministry in disposing of the RTI requests. Perhaps there is a case for looking at their proactive disclosures under Section 4 of the Act.

Chart 2: Ministry-wise distribution of requests received and rejected



Note: The figures are cumulative and include those corresponding to the public authorities under the respective Ministries as well

Chart 3 shows the distribution of provisions invoked under Sections 8, 9, 11 and 24 of the Act while rejecting the requests. Not all requests were rejected under the provisions of these sections. Therefore a category of 'Others' was included. As far as possible, public authorities should reject RTI requests using provisions of the Act. However, 35 per cent of requests rejected fall under the category of 'Others'. This indicates that perhaps there is a need for immediate action by the Government under Section 26, which mandates that the Government 'develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act'

Chart 3: - Distribution of provisions invoked under Sections 8, 9, 11, and 24 of the Act

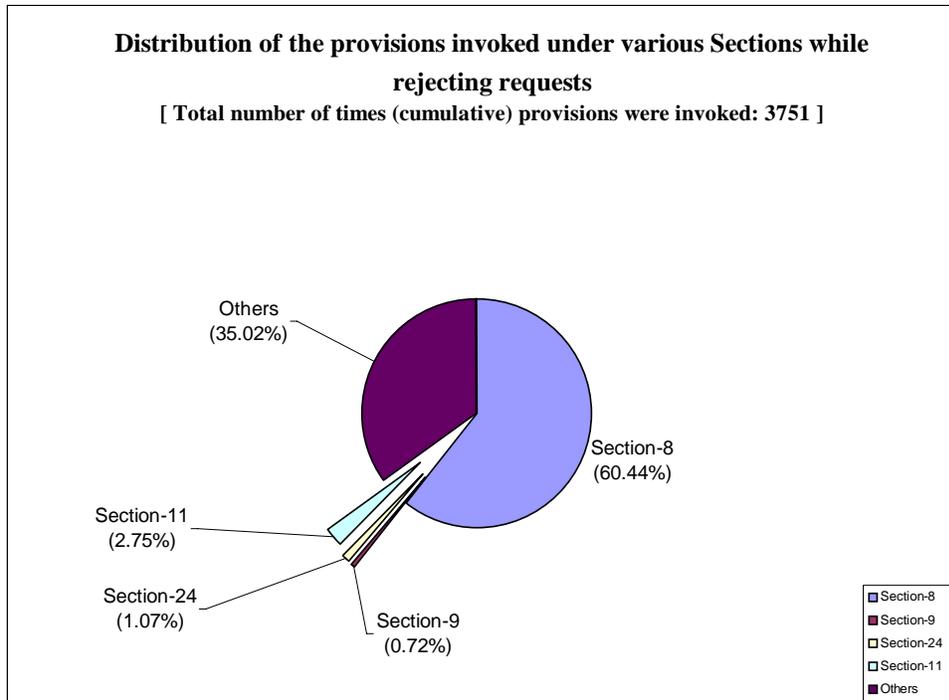
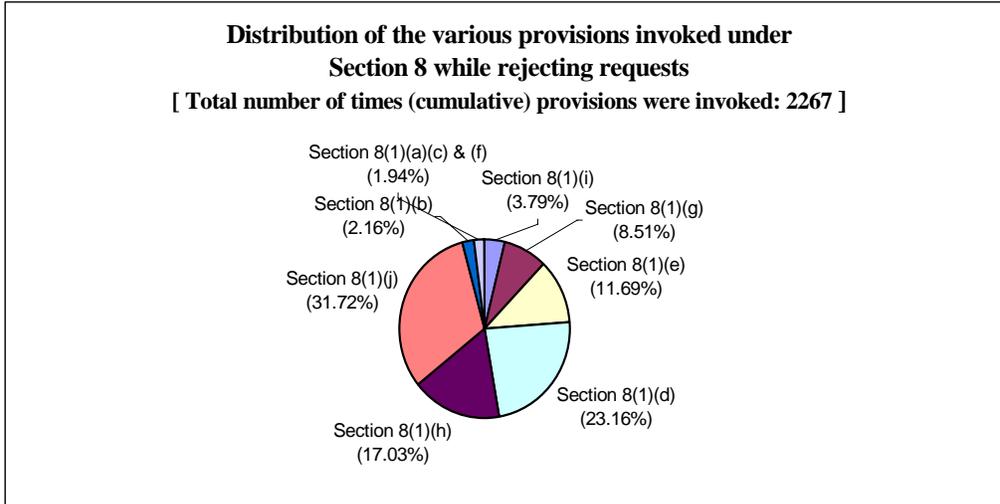


Chart 4 shows the distribution of various provisions invoked under Section 8 while rejecting requests. Sections 8(1) (j), 8(1) (h), 8(1) (e) and 8(1) (g) were most commonly used.

Chart 4: - Distribution of various provisions invoked under Section 8 while rejecting requests



There were only two instances involving disciplinary action against officers in respect of administration of the RTI Act in 2005-06. Both these cases pertained to the Department of Posts.

Disposal of appeals and complaints by the Central Information Commission

Four Information Commissioners, including the Chief Information Commissioner, were in officer for nearly the entire period since the enforcement of the RTI Act from 12 October 2005 up to 31 March 2006. The fifth Information Commissioner was in office for about three months only during this period.

As of 31 March 2006, the Commission registered 451 appeals, out of which it disposed 441 and 252 complaints out of which it disposed 241. Almost 49 per cent of the appeals registered were due to an unsatisfactory response from the Appellate Authorities or Central Public Information Officers, while 28 per cent was due to no response being received from the public authorities. In only 23 per cent of the cases did the Appellate Authorities deny information by invoking various sections of the RTI Act. This indicates that public functionaries lacked appreciation of the provisions of the Act since they cannot deny information save as per these provisions. This could have been due to lack of training in the initial phase of the Act.

The Commission allowed 43 per cent of the appeals filed and rejected approximately 19 per cent. However, it returned 35 per cent of the appeals, which belonged to the category termed as ‘Others’. These returned appeals were those where the Commissioners could not give a favourable or unfavourable decision. Since these could not be considered for a final decision, they were returned with suitable advice to the applicant. This indicates a lot of effort is required for, ‘...educating general public and develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under the Act’ (Section 26 of the Act). The nature of appeals referred and type of the disposal of these appeals by the Information Commissioners is in Table 6.

Table 6: Analysis of appeals referred to Commission
A. Nature of appeals referred to the Commission

Total references received	Nature of appeals received		
	No response from Central Public Information Officer/Appellate Authority	Unsatisfactory response from Central Public Information Officer/Appellate Authority	Information denied under various Sections
451	124	223	104

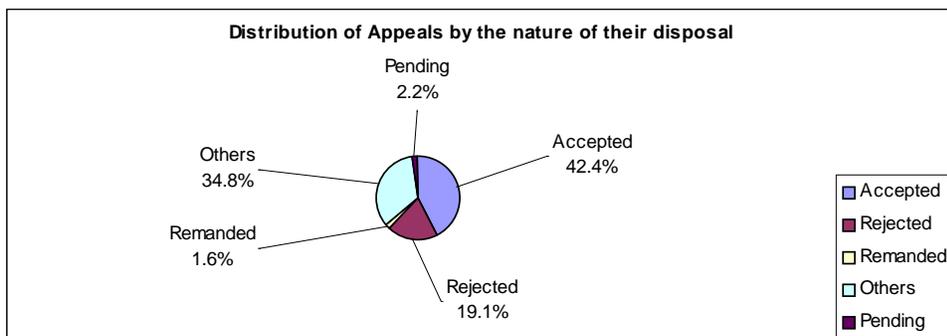
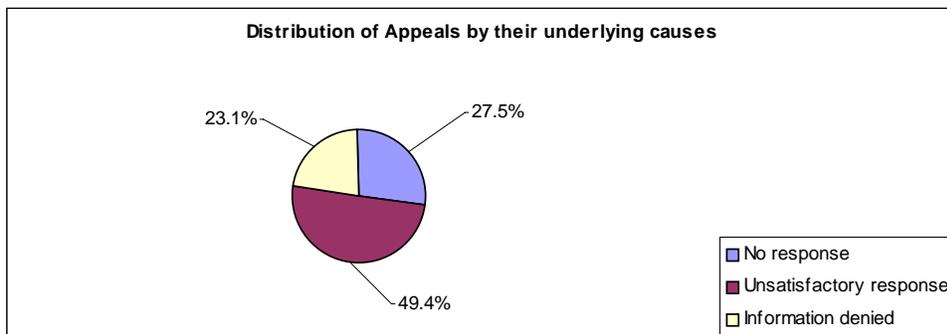
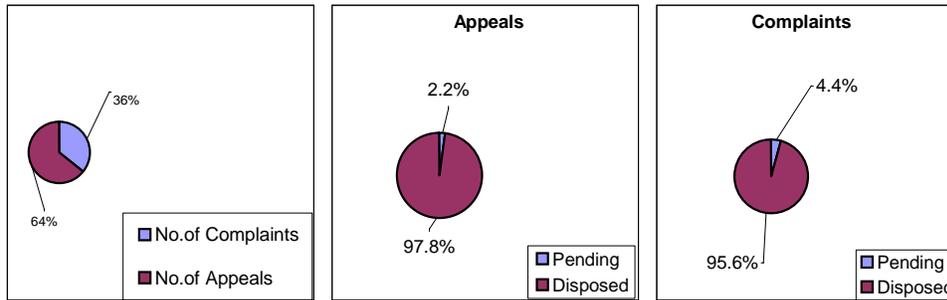
B. Outcome of appeals decided by the Commission

Total referenc es received	Appeals disposed as				
	Accepted	Rejected	Remanded	Others	Pending
451	192	86	7	156	10

C. Break-up of 'Others'

S. No.	Categorisation of 'Others'	
1	Returned as first appeal not filed	33
2	Procedure explained, when appellant approached the Commission for seeking information	16
3	Appeal Memo not as per Rule 3 & 4 of CIC Appeal Procedures	39
4	Information received during the proceeding	26
5	Out of CIC's jurisdiction	6
6	Withdrawn	31
7	Appeal not maintainable	5
Total Appeals disposed of as "Others"		156

Chart 5: - The analysis of appeals and complaints received/disposed by the Commission is shown in



CHAPTER 5: Significant Initiatives by Ministries/Departments/Public authorities and Suggestions for Reforms

This chapter is divided in two parts:

- The first part describes the significant initiatives undertaken by public authorities to implement the Act
- The second part is a brief account of the suggestion for reforms by public authorities to meet the challenges they faced in effectively implementing the Act.

For both parts, this chapter accounts for only those public authorities that have responded to the Commission's circulars to Ministries for compliance and action taken reports (Annexes 5, 6, 7). The deadline for the response from Ministries was extended from 4 August 2006 to 11 August 2006 and finally to 25 August 2006.

Part I:

Section 25 (3) (f) of the RTI Act mandates that public authorities should report:

“Any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of the Act”

Only those significant initiatives that have gone beyond the mandatory requirements for compliance under the Act have been presented as efforts to administer and implement the Act. Therefore, the appointment of information officers and compliance under Section 4 of the Act have not been included here as efforts, since they are of a mandatory nature and require strict compliance.

Significant initiatives by Ministries/Departments/public authorities to implement the Act

The following public authorities are among those who have reported the setting up of **Information Facilitation Centres/RTI Cells** to accept information requests and payment of registration fees:

Department of Agricultural Research & Education (Ministry of Agriculture), Department of Fertilizers (Ministry of Chemicals & Fertilisers), Ministry of Coal, the Food Corporation of India, Regional Office, Haryana (Ministry of Consumer Affairs, Food & Public Distribution), the Directorate General of Health Services (Ministry of Health & Family Welfare), Ministry of Home Affairs (Secretariat), Department of Rural Development (Ministry of Rural Development), Department of Shipping and Department of Road Transport & Highways (Ministry of Shipping, Road Transport & Highways), Public Information Cell (Ministry of Urban Development) and the Directorate of Estates (Ministry of Urban Development).

The Department of Road Transport & Highways and the Public Information Cell of the Ministry of Urban Development have reported the setting up of a **separate RTI Section/Cell to implement the Act.**

The Ministry of Civil Aviation and the Department of Commerce (Ministry of Commerce & Industry) have reported the **drafting of an internal procedure to implement the RTI Act.** The Directorate General of Supplies & Disposals (DGS&D, Ministry of Commerce & Industry) has set up a **cash register for application and other information fees** so that the money received can be monitored and accounted for. It has also reported that it has taken the initiative of **designating alternate Public Information Officers and Assistant Public Information Officers** who can implement the Act in the absence of the Public Information Officers and Assistant Public Information Officers. The Noida Special Economic Zone (Ministry of Commerce & Industry), the Office of the Registrar of Companies Tamil Nadu-Coimbatore (Ministry of Company Affairs) and the State Bank of India (Ministry of Finance) have reported that they have **disseminated awareness about the Act amongst the public.**

Several public authorities have also reported that they have undertaken **training of their Public Information Officers and issued guidelines about implementing the Act.** These include the Export Inspection Council and the Export Credit Guarantee Corporation of India Limited (Ministry of Commerce & Industry), the Department of

Posts, Ministry of Communications and Information Technology, the Department of Food & Public Distribution (Ministry of Consumer Affairs, Food & Public Distribution), the State Bank of Bikaner and Jaipur, (Department of Economic Affairs, Banking & Insurance Division, Ministry of Finance), Bharat Heavy Electricals Limited (BHEL, Ministry of Heavy Industry & Public Enterprises), Ministry of Home Affairs (Secretariat), the Border Security Force (Ministry of Home Affairs), the Department of Secondary & Higher Education (Ministry of Human Resources Development), Department of Rural Development (Ministry of Rural Development), Department of Shipping and Department of Road Transport & Highways (Ministry of Shipping, Road Transport & Highways), Manganese Ore India Ltd (Ministry of Steel) and the National Buildings Construction Corporation Limited (NBCC, Ministry of Urban Development).

The Commission cannot reiterate enough the importance of electronically managing records and connecting information networks. The Inter-State Council Secretariat and the S V P National Police Academy, both from the Ministry of Home Affairs, have reported a step in this direction by **computerising and electronically managing their records**. The Rashtriya Ispat Nigam Limited (Ministry of Steel) has availed of the **services of Assistant Public Information Officers from Department of Posts for receiving RTI mails** in order to manage the flow of requests.

RTI Request Management Information System

The National Informatics Centre (NIC) is in the process of setting up a RTI Request Management Information System (RRMIS) to monitor requests received under Section 6 of the Act. There are three modules on this site, which is located at <http://164.100.42.72/rti-mis/>. The concerned public authority, the Central Information Commission and the Assistant Public Information Officer at the Department of Posts can use these modules:

- Request and First Appeal Module for Public Authority
- Second Appeal Module for Central Information Commission (CIC)

- Request and Appeal Module for Central Assistant Public Information Officer (CAPIO), Department of Posts

There is also an updation system where the stage at which the application is, can be updated as and when required

Part II:

In addition to the suggestions for the “*development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to information*” that the Commission is mandated to provide in respect of every public authority under Section 25 (3) (g), it has received suggestions from some public authorities for reforming the Act to ensure better implementation.

Infrastructure

The Directorate General Supplies & Disposals (Ministry of Commerce & Industry), the Department of Posts (Ministry of Communication and Information Technology) and the Hindustan Newsprint Limited (Ministry of Heavy Industry & Public Enterprise) feel that **Public Information Officers should be provided with supporting staff and other infrastructure such as computer, printer, space for staff etc.**, as the lack of such basic infrastructure impedes the timely implementation of the Act.

Old records

The Rubber Board and the PEC Limited (Ministry of Commerce & Industry), Hindustan Newsprint Limited, Department of Food & Public Distribution, and the Ministry of Mines have requested that the **time limit for destroying old files be re-evaluated and re-fixed** and that **clarifications should be issued regarding entitlement of the questioner to very old records, which will not help the public.** The Indian Renewable Energy Development Agency Limited (IREDA, Ministry of Non-Conventional Energy Resource) has suggested that **a specific amendment may be made with reference to the period up to which information can be requested/furnished.**

Fees

Several public authorities including the Department of Consumer Affairs, Department of Health & Family Welfare, the Ministry of Mines, IREDA and the Delhi Metro Rail Corporation (DMRC, Ministry of Urban Development) have suggested the fee be increased for **detailed information covering large periods of time, which is sought in a format in which the information is generally not maintained by Ministries/Departments**. These public authorities feel this is a lacuna, which needs to be taken care of to discourage frivolous and superfluous requests under the Act

Exemption

Several public authorities want some sort of exemption from the purview of the Act. For example, while the Union Public Services Commission (UPSC, Ministry of Personnel, Public Grievances & Pensions) **requested exemption from disclosure of information relating to examination, and recruitment/appointment cases**, the DMRC **requested general exemption** as it is undertaking a time-bound exercise of completing the Delhi Metro. The Central Bureau of Investigation (CBI, Ministry of Personnel, Public Grievances & Pensions) has also **requested for exemption by inclusion under Schedule 2 of the Act**

The Supreme Court of India (Ministry of Law & Justice) has sought exemption from the Act for **any information, which, in the opinion of the Chief Justice of India or his nominee, may adversely affect or interfere or tend to interfere with the independence of the judiciary or administration of justice.**

An entirely different category of public authorities – commercial public sector undertakings – has also requested exemption from the Act, with both the Rashtriya Chemicals and Fertilizers Limited (Ministry of Chemicals & Fertilizers) and BHEL making suggestions to this effect.

The NBCC has suggested that **provisions of the RTI Act be extended to cover private sector as well or exemption be considered for public sector undertakings** and, finally, PEC Limited has sought **clarifications regarding entitlement of questioner seeking information on commercial deals or apparently irrelevant information, which will not help the public**

Appeals

The Supreme Court of India has suggested that a decision by the Chief Justice of India under the Act should not be subjected to further appeal. It has suggested adding the following provision to Section 9 (3):

“Provided further that the Second Appeal arising out of the Order passed by an officer of the Supreme Court of India inferior in rank to Registrar General of Supreme Court of India shall lie before the Registrar General of Supreme Court of India”

Canara Bank (Ministry of Finance) has suggested making the **application fee mandatory for appeals as well**. The CBI has observed that **if the immediate appellate authority has also rejected a request for information, it is not fair to penalise the Central Public Information Officer alone for not providing the information**.

Safeguards to be built into the Act

Several public authorities have sought safeguards to be built into the Act to prevent its misuse. The Export Inspection Council has emphasised the need for **safeguards to discourage those who request personal information**, while the Rashtriya Ispat Nigam Limited wants the **safeguards to ensure that the Act does not become a tool in the hands of delinquent employees to serve their own interests**. BHEL and the DMRC, have both **requested the inclusion of provisions to check the bonafide of the requester and to refuse information to those who are not directly concerned with it, or might use it for promoting their own business interests or may misuse it**.

Other suggestions

- Appointment/removal of the Central Public Information Officer may be done in consultation with the Central Information Commission.
- Implementation of the Act may be reviewed at regular intervals to evaluate the challenges and difficulties that arise.
- Clarifications may be issued on how correct and accurate information can be collected from all postal circle offices in the country in the case of requests that are of an all-India nature.
- The Commission should make it clear whether, in the case of a query from a media agency, the Central Public Information Officer is obliged to take appropriate action even if he is of the level of Deputy Secretary/Under Secretary.
- The definition of public authority under Section 2 (h) may be reviewed.
- The Rules may be modified to define the level or depth of details required in responding to the information request.
- The time frame of one month for replying to queries may be increased; the number of questions in a single representation may be restricted to only one; suitable amendment may be made in the Act so as to specify/curtail the number of applications an applicant can make on the same issue.
- The Act may specify incentives for Public Information Officers as a method of ensuring that they do justice to this job.
- Important decisions taken by the Central Information Commission in various appeal cases may be circulated to all Ministries/Departments for guidance; guidelines giving examples and illustrations of cases that Section 8 (1) (j) covers may also be issued.
- The fees charged under Section 4 of the Right to Information (Regulation of Fee and Cost) Rules 2005 may be exempted in situations where the total amount to be charged for providing information in a request is less than Rs. 10/-.
- A public awareness camp may be held to make the general public aware of their right for asking information and what information can be sought from a public authority.
- Adequate training may be provided to officials dealing with matters relating to the Act.
- Fees by way of cash sent by post should not be accepted; guidelines may be issued for making payment through Bank

Conclusion:

Several public authorities have reported compliance with mandatory obligations under the Act, such as the appointment of Public Information Officers and disclosing information *suo motu* as required by Section 4 and its sub-sections. However, the stocktaking of the implementation of the Act by Ministries, Departments and their public authorities for 2005-06 reveals that more still needs to be done. These include:

- The proper indexing and computerisation of records for regular and consistent publishing on the website of the public authority, so that members of the public do not need to personally file an application or visit the official to seek information.
- An efficient categorisation of records in terms of the number of years for which they would be preserved and then weeded out, and ensuring publicity for such categorisation so that the public would be aware of what information is available and not ask for that which does not exist.
- Simply publishing a number of manuals on information disclosed under Section 4 (1) (b) of the Act is not sufficient. Public authorities need to go beyond this and link what is published to the actual information, be they rules and regulations, minutes of meetings or decision-making procedures. Moreover, public authorities need to extend the *suo motu* disclosure of information not only to the whole of Section 4, but also to all information which they consider to be in the interest of the public to be published.
- Public authorities must develop the software to process applications online at the level of the Public Information Officer and of the Appellate Authority as well. This would help meet the Act's aim of not inconveniencing citizens who want to access information. To this end, public authorities must also develop an online system of depositing of fees/information charges. Information can be released once the final payment is made.
- Public authorities must also begin to use open access software such as Wiki or Plone to upload information that they have disclosed to citizens under RTI on their website. They could initially upload only information which is most

requested by citizens, and steadily, say, within the next 12 months, move towards a system where all information that is requested is automatically made public, unless it falls under the exempted category.

- Finally, an attitudinal change is needed among public officials who still believe that they have a monopoly over records and resent the public's demand for "too much" information for "too less" a fee.

Public authorities must attempt to make the Act as citizen-friendly as possible rather than pitch for exemption from its purview. Initiatives such as the ones listed above would be more in line with the letter and intent of the Act, which has placed on public authorities the onus of its effective implementation.

CHAPTER 6: Central Information Commission's Suggestions for Reform

The early months of the implementation of the RTI Act proved to be a mixed experience for all stakeholders – citizens, civil society organisations, public authorities and the Information Commissions.

Though the public authorities got only three months to prepare themselves to receive and respond to requests for information from the public (compared to the five years that the United Kingdom's *Freedom of Information Act, 2000* provided its public authorities), the efforts made by many of them have been commendable. But given the high public expectations from the law, it was inevitable that the shortcomings would be highlighted far more than the achievements.

The experience of the Commission while dealing with complaints and appeals from the public in the first six months of the operation of the Act has demonstrated that its effective implementation requires the following issues to be addressed by various stakeholders:

Government

The Government may consider the following:

RTI Implementation Mechanisms

- Setting up a citizens' council of RTI User Groups/Sector Panels to oversee the implementation of the Act and act as a bridge between the public and Government.
- Public authorities engaging in dialogue with applicants can be a constructive process to strengthen the freedom of access to information. Every Ministry could consider setting up a mechanism within public authorities under its jurisdiction to address this.
- In keeping with the above suggestion, each Ministry may *suo moto* develop a mechanism in consultation with the Commission to deal with RTI matters in any Government Department.

Suo Moto Disclosures

Though Section 4, requiring the Government to publish all information except that which the law permits to be kept a secret, is the key to the RTI Act, unfortunately, public authorities neglected it the most in 2005-06. Public authorities find themselves too overwhelmed by information seekers to focus their energies on furnishing or even expanding the scope of *suo moto* disclosures of information. For this exercise to be fruitful, there has to be an attitudinal change.

Section 4 will, after an initial effort, make it easier for public authorities to implement the Act. It is important to recognise that increasing transparency about each public authority's manner of functioning and devising judicious administrative strategies to utilise the existing limited resources for maximum disclosures is the only way to minimise citizen's resort to the RTI Act to get required information.

The Commission therefore suggests the following:

- Citizen's Charters adopted by most public authorities should be made an integral part of section 4(1)(b) disclosures so that the public is aware of the commitments of a public authority towards it.
- Each public authority must earmark a certain percentage of its budget for improving its Section 4 obligations, particularly for the purpose of extensive computerisation. The Finance Ministry may ensure that Departmental budgets allow for this.
- For satisfactory compliance of the provisions of Section 4, it is also essential that public authorities review the manner in which they conduct their business and re-visit the processes that Section 4 (1) (b) (iii) requires to be disclosed.
- Records maintenance is in a state of utter neglect. The National Archives must take the initiative to advise, review and update record retention schedules of Government documents to enable the fullest implementation of Section 4(1)(a) in letter and spirit.

- Each Department may ensure full implementation of Section 4 (1) (c) and (d), as these two subsections are designed to draw public participation in governance in areas of concern to the citizen, an essential element of a democratic process

Public Authorities

There is resistance from various organisations, even though they are substantially funded by the Government and meet the criterion laid down in Section 2(h) of the Act, to being defined as public authorities. Even Ministries have reported doubts on the status of such organisations. To remove ambiguity in the definition of a public authority, it is essential that the appropriate Governments and Competent Authorities under the Act notify all their public authorities, under Section 2(h) of the Act.

Payment of fees

There has been a lot of demand to expand the modes of depositing the fee for making an RTI application. In an effort to do so, the Government recently decided to accept Indian Postal Orders as a mode of payment. The Commission would recommend that even a Rs.10 postal stamp affixed to the application should be considered as valid payment of fee for registration of an RTI application. There is also a case for ensuring that rates of fees across the country are made uniform.

Seeking information using e-mail

Although the Act provides for seeking information through e-mail, it has not laid down the mode of depositing the fee in such cases. It is suggested that the Public Information Officer (PIO) may write to the applicant asking him/her to send in the required fee through any of the other prescribed methods within a fortnight so that necessary action could be initiated on the application.

Designating Assistant Public Information Officers

All Head Post Offices should be designated as APIOs to receive RTI applications for public authorities. The post offices may forward the applications with the application fee and charge postal fees, if any, separately.

Powers of the civil court

Section 18 gives the Commission powers of a civil court to entertain complaints. However, similar powers have not been given under Section 19, which empowers the Commission to receive and hear the appeals, although it can be assumed that this power will apply *mutatis mutandis*, i.e., with the appropriate changes, to all proceedings of the Commission. This needs to be clarified

Section 26 Obligations

One complaint has been that the beneficiaries of the Act have largely been public officials and the educated urban people and the benefits have not percolated to the poor and people from the rural areas. This indicates that there is a need on the part of Government to fulfil its obligations under Section 26 of the Act. Public authorities must set aside a specific budget for dissemination of knowledge amongst citizens so that the provisions of the Act can be utilised at all levels of society, through heightened public awareness.

Annual Report of the public authorities

All public authorities must be asked to include a chapter titled "Implementation of RTI Act 2005" in their annual reports. This chapter should include details of statutory disclosures under Section 4 and a summary of the RTI requests received, the nature of these requests and the manner of their disposal. A summary of appeals disposed by Appellate Authorities may also be incorporated. The public authority may highlight efforts made in setting up a 'practical regime' for improving transparency and increasing accountability. The Commission can study these efforts and make recommendations to Parliament (through the Central Government) for instituting suitable awards as recognition of these efforts.

Strengthening the grievance redressal mechanism of public authorities

The experience with the implementation of the Act shows that a large number of complaints/appeals received are in the nature of grievances, mainly from Government employees. All public authorities should review and strengthen their grievance redressal systems so that citizens/employees do not have to resort to the RTI Act. Such a system should be put in the public domain, such as the public authority's website, under Section 4(1) of the Act. In addition, the manner in which grievances are redressed should be open for public scrutiny under the Act.

Provisions regarding NGOs

Since the RTI Act brings all NGOs receiving substantial Government funding within the definition of a public authority, it is important that all Government agencies that provide funds to NGOs do so only after ensuring that these have instituted all necessary mechanisms to provide information to the public as required by Sections 5 and 6 of the Act. They should also be made to comply with the statutory disclosure requirement as per Section 4(1). Since several of these NGOs would be small organisations and may not have the resources to arrange for PIOs and Appellate Authorities, the Government may draw up special rules for NGOs for meeting disclosure norms.

Monetary remuneration to the Public Information Officers

From the many hearings held at the Commission, it is obvious that PIOs have a difficult task to fulfil. Though they have been designated to take up this duty in addition to their normal duties, they are not compensated for the additional work. Moreover, they are often caught between the wrath and reluctance of their seniors in having to part with the information and the insistence of the Commission that they do their duty. Some PIOs have expressed the fear that their Annual Confidential Reports (ACRs) may carry adverse remarks, as they have displeased their seniors by pressing them for information in response to an RTI application. This has an adverse bearing on the effective implementation of this Act. Accordingly, the following proposals may be considered:

- Directions should be issued to all public authorities to give a suitable monetary remuneration to the PIO after assessing his responsibilities and workload in that particular office.
- Just as Vigilance Officers in Government Departments who, though working in the Department, are considered also to be officials of the Central Vigilance Commission, which writes their ACRs, similarly, the PIOs of public authorities should be considered as officers of the Central Information Commission with their ACRs written by the Information Commissioners either in the Centre or in the States. This will provide them an opportunity to work objectively and fearlessly.

Information Commissions

Financial and administrative autonomy of the Commission

Independence of the Commissions and effective discharge of their duties cannot be guaranteed without granting them financial and administrative autonomy. Urgent steps are required to make the expenditure of the Commission as “charged” upon the Consolidated Fund of India. Commissions should be allowed independent accounts personnel with powers to write cheques. The present arrangement in the Central Information Commission, where contingency and other bills are submitted before the Pay and Accounts Officer, Ministry of Personnel, Public Grievances & Pensions, in Lok Nayak Bhawan New Delhi, which is 13 km away from the Commission’s office, and drawing money from the designated bank branch in Parliament Street causes considerable inconvenience, wastage of manpower and delay in making payments for the goods and services purchased/ hired.

Contempt powers

The Commission feels handicapped about not being able to hold Central PIOs and public authorities accountable for non-implementation of its orders/decisions. To give teeth to its powers, it is essential that the Commission be given powers of contempt of court. Although contempt proceedings are permissible under the Indian Penal Code (IPC), resorting to this could compromise the independent character of the Commission

Training of Public Information Officers

Urgent attention needs to be given towards training the staff of public authorities for better appreciation and understanding of the Act as well as to bring about an attitudinal change in favour of transparency. A time-bound programme may, therefore, be drawn up by every Ministry for training all PIOs along with other concerned officials in the treatment of RTI applications.

Internal procedures

The Commission should have all powers to decide its internal procedures, especially about disposing of appeals

Review/ Revision

Since the Commission is the final authority in all disputes under the RTI Act, it is important that powers of review, as well as of revision (by the full Commission or a larger bench) be explicitly incorporated in the Act through an amendment. To prevent misuse of these provisions, adequate conditions for involving these powers may be incorporated through the amendment.

Reference

Under the RTI Act, the Central Information Commission and the State Information Commissions act independently in relation to Central and State subjects. There may be certain information – especially in the Concurrent List – which may have elements of information held both by Central and State public authorities. Sometimes, even separating such information may not be possible. In all such cases, the CIC should have the powers to decide the appeal even if the matter is a State subject when such a matter is before it in an appeal or when a State Commission refers the matter to it. .

Provision will need to be made to apply the CIC's decisions to States with all attendant penalty provisions; to allow State Commissions to refer a matter to the CIC; and to

empower the CIC to withdraw a case, which may be before it or a State Commission for appeal.

Warrant of precedence

Section 12 of the Act stipulates that the status of the Chief Information Commissioner and Information Commissioners will be equivalent to that of the Chief Election Commissioner and Election Commissioners of the Election Commission of India. However, the Central Government has not clarified their status in the Warrant of Precedence maintained by the Ministry of Home Affairs. A large number of facilities including personal security is linked to the Warrant of Precedence. There have been occasions when a large number of litigants appear together before the Commission and form a crowd that could only be managed with the help of security staff. Some appellants too have shown disrespect to the Information Commissioners who felt possibilities of rowdy behaviour could not be ruled out. Since the Warrant of Precedence has not been finalised, the Commission would recommend this important administrative reform for its effective functioning.

Government, Information Commissions and Civil Society

Awareness Campaign

A Committee comprising the Chief Information Commissioner, two Information Commissioners, the Secretary, Ministry of Personnel, Public Grievances & Pensions, Secretary, Ministries of Home and Information & Broadcasting or their nominees, three State Chief Secretaries or nominees (by rotation), three State Information Commissioners and two NGOs may be constituted to continuously monitor campaigns to increase awareness about the Act. Separate funds should be earmarked for this Committee.

Centre for Accountability and Transparency

The Commission should be empowered, financially and administratively, to allocate funds and undertake suitable research and development activities for the promotion of relevant programmes that are critical for strengthening the information regime, as envisaged in the Act. The Government may set up a Centre for Accountability and Transparency for undertaking activities relating to research in best practices in creating an open access regime and other such related activities that would effectively strengthen the Commission in pursuing its mandate.

The RTI Act is a historic piece of legislation. Its success depends on public authorities and PIOs becoming aware of their responsibilities and ordinary citizens becoming better informed about the law. Much would hinge on the seriousness of the Government and public authorities in fulfilling their obligations and ensuring the removal of difficulties in the Act's functioning, while at the same time strengthening the hands of the Commission to achieve the aims of the law. The Commission's role is pivotal. It is the final authority in the interpretation of the Act. But it is neither a social activist nor a pillar of Government. To achieve its mission of setting standards, the Commission's efforts are geared towards working in coordination with all stakeholders, not as adversaries but as a neutral party.

Annex