

## News on Right to Information

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**4<sup>th</sup> September, 2010**

### **Form 10 details must be disclosed under RTI act**

*The Hindu*

The details of Form 10 submitted by an office to the Employees' Provident Fund Organisation should be disclosed under the RTI Act, the Central Information Commission has held.

The Commission directed the EPFO to disclose Form 10 details — including information on workers who have resigned — submitted by a newspaper group, which were demanded by an RTI applicant.

The EPFO refused, saying the records were held in “fiduciary capacity” —exempt from disclosure under the RTI Act — by the Regional PF Commissioner. — PTI

**7<sup>th</sup> September, 2010**

**CIC: Preparatory info of Cabinet papers can be disclosed under RTI**

*The Times of India*

Pushing the envelope regarding disclosure of confidential information, [Central Information Commission](#) has ruled that documents are open to public before being submitted to the cabinet secretariat for the Union Cabinet's consideration.

This is a departure from the usual practice in the government where most public authorities took a wide view and denied all information related to Cabinet notes on the plea that the issue was under consideration and had not been finalised.

A CIC bench decided that proposals formulated by ministries get cover under exemption clause of [RTI Act](#) only when they are 'actually' submitted to cabinet secretariat to be placed for discussion. The RTI Act under section 8(1)(i) exempts from disclosure Cabinet papers including records of deliberations of council of ministers, secretaries and other officers till decision has been taken.

"Exemption under section 8(1)(i) will apply only when a note is submitted by the ministry that has formulated it to cabinet secretariat for placing this before the Cabinet. All concomitant information preceding that, which does not constitute a part of that Cabinet note will then be open to disclosure," the CIC said.

The records which went into preparation of a Cabinet note "but is not a part of it" have to be provided to an RTI applicant as per provisions of the law, the commission felt. "A note that is withdrawn would therefore not constitute a Cabinet note and would qualify for disclosure," the order said.

**11<sup>th</sup> September, 2010**

**NHAI has failed to explain toll revision**

*The Times of India*

PUNE: City-based citizens group Sajag Nagrik Manch (SNM) has complained to the chief information commissioner that the National Highways Authority of India (NHAI) has failed to disclose the facts and exact reasons for the increase in toll rates at two spots on the Pune- Bangalore highway.

The toll rates at Khed Shivapur in Pune district and Anewadi in Satara district on the highway have been changed with effect from September 9. The revised rates are displayed at both the nakas.

In a letter to the NHAI project director in Pune, SNM convenor Vivek Velankar has pointed out that as per the provisions under the Right To Information Act, the NHAI is required to pro-actively publish the facts and reasons for increasing the rates at the two toll nakas. Velankar said the hike in toll rates is nearly 40 per cent and was going to affect lakhs of commuters on a daily basis.

In the letter to the chief information commissioner, Velankar said that NHAI officials have not responded despite being reminded of their legal obligation. He urged the commissioner to direct the NHAI to publish all facts and reasons for the hike.

Read more: NHAI has failed to explain toll revision - The Times of India  
<http://timesofindia.indiatimes.com/city/pune/NHAI-has-failed-to-explain-toll-revision/articleshow/6532874.cms#ixzz0zrPGZvAe>

**14<sup>th</sup> September, 2010**

**RTI officials say no misuse of act, only frivolous requests [India]**

*The Times of India*

NEW DELHI: Burning a hole in the government's oft used argument that Right to Information Act needed to be amended to prevent its misuse and discourage frivolous and vexatious applications, government-appointed information commissioners have said the legislation was not being misused.

A survey by NGO Parivartan found that only 22% of information commissioners (ICs) felt that there was misuse of the law while only 11% felt that applications filed by people were frivolous.

Parivartan sent questions to 104 ICs in the country of which 44 responded. Eight commissioners emphatically said there was no misuse of RTI Act. Information commissioners from Nagaland, Mizoram, Himachal Pradesh and Goa felt there was no misuse of RTI Act.

Bihar chief information commissioner Ashok Kumar Choudhary felt that since illiteracy was so high, the Act may be misused. "But I have personally not come across any such case so far," he said.

Eighteen commissioners felt that RTI Act was being misused in a small number of cases. Chief information commissioner Wajahat Habibullah and IC Shailesh Gandhi put such misuse at less than 5% while M L Sharma felt most of the misuse was by government officials.

Only about 10 commissioners felt that misuse was more than 10%. IC M M Ansari felt that a very large number of people, almost 80%, misused the Act. "The situation is growing from bad to worse. Now, people only misuse the Act. There is no provision to impose penalty on people, who are misusing the Act. Most of the applicants are government officers who either want to solve their grievances or want to know details of their promotions," he said.

IC Annapurna Dixit put misuse at 30% while Anil Joshi of Chhattisgarh pegged it at 50%.

Similarly, 24 commissioners felt the incidence of frivolous RTI applications was very little, less than 10% and only five commissioners felt that more than 10% applications were frivolous. Nine commissioners said they did not come across any frivolous RTI applications.

Almost all information commissioners in the country are saddled with huge pendencies. While CIC has a pendency of almost a year, Maharashtra and UP have pendencies of almost two years.

The information watchdogs were also asked if the imposition of penalties had an impact on reducing the influx of appeals and complaints to the commission. Most felt that penalties did impact the decision. However, eight commissioners feel penalties had nothing to do with pendencies while five said there was no evidence to draw any conclusions either way.

## Information as a right

N. Bhaskara Rao



The Hindu Union Minister for Law and Justice M. Veerappa Moily and Chief Information Commissioner Wajahat Habibullah during the 5th Annual Convention on RTI in New Delhi recently. Photo: R. V. Moorthy

Five years after the enactment of the Right to Information Act, awareness of the law, its provisions and potential appears to be very low.

Marking the completion of five years, in September 2010, of the enactment of the Right to Information Act, the Central Information Commission (CIC) held the fifth annual convention on “RTI: Challenges and Opportunities,” in New Delhi on September 13 and 14. It was largely a gathering of Information Commissioners from the States and the Centre.

The five technical sessions had presentations by Commissioners and other experts. I had actively taken part in the earlier four annual conventions organised by the CIC more or less on similar lines. Six things stood out at this latest meeting.

First, the key leadership role played by Wajahat Habibullah, as the Chief Information Commissioner, in ushering in the RTI regime was acknowledged and he was credited for ensuring the independent standing of the Commissions.

A second outcome was that the fact that Section 4 of the RTI Act has not received the kind of attention it deserves in order to sustain the right to information regime — Mr. Habibullah himself has highlighted this aspect more than once — was echoed on both the days, but no specific suggestions emerged. Governments at the Centre and in the States need to do more in this regard than what the Information Commissions themselves could do.

Third, most participants reiterated that awareness about the Act, its provisions and potential was very low, and that more serious efforts are required. Also, efforts to sensitise the functionaries concerned were not good enough.

A fourth and more sensitive question that became evident during the deliberations was who, between the Commissions and civil society, has taken the Act to the people and are responsible for prompting the imagination of the people. Surprisingly, the divide in this regard was open. The Commissioners ought to have acknowledged the active role played by civil society and reiterated the need to work together even more in the future. The keynote speaker and other speakers expressed their concern about certain “belligerent tendencies” on the part of individual activists. Such isolated instances should not weaken the critical role played by civil society groups on this front.

### **Threats to activists**

Fifth, the convention expressed concern over threats that some activists faced in the course of their work and condemned the killing of certain RTI activists that have occurred. In this context, Union Minister for Law and Justice M. Veerappa Moily, who inaugurated the convention, confirmed that the Union Cabinet was determined to bring forward the whistleblowers bill [‘The Public Interest Disclosure and Protection to Persons making the Disclosure Bill, 2010’] in the coming session of Parliament.

Sixth, the delay in disposing of applications and the backlog in the process that the Commissions are confronted with was yet another issue that was deliberated upon. But no options or alternatives came up. It was agreed that the RTI Act had kept the bureaucracy on its toes. But a general view was that the pile-up of applications was caused by the fact that the government and its agencies were not forthcoming in providing information promptly. One of the sessions dwelt on how the judiciary, the subordinate judiciary in particular, was largely apathetic and non-cooperative in responding to RTI petitions.

According to a PTI news report, the Minister who inaugurated the event said “RTI should not be a casualty of corrupt bureaucrats.” Shailesh Gandhi, a proactive Central Information Commissioner with the distinction of having been an RTI activist

himself in Maharashtra before becoming Commissioner, said later in his presentation that the RTI Act need to be guarded from three potential threats — from the government, the judicial processes and the Commissions themselves.

Mr. Gandhi wanted Information Commissions to take an initiative on issues with wide-ranging and long-term implications: it would be too late to do anything if the Commissions have to wait. He himself had asked the Delhi government to put all its contract agreements concerning consultancy arrangements for the Commonwealth Games in the public domain within a week.

Gajendra Haldea of the Planning Commission, in a presentation on the Public-Private Partnership model, theorised that 20 years from now a third of the land in India would be in the hands of a few private corporates, going by the manner in which Special Economic Zone agreements were being entered into (with public scrutiny).

Mrinal Pande, chairperson of the Prasar Bharati Board, wanted the media to be brought under the preview of the RTI Act. (This was a suggestion that this writer had made at the second annual convention in 2007 and has been advocating since then, without success.)

The session should have deliberated on the media's role and acknowledged the sustained interest taken by some media outlets such as the Telugu newspaper *Eenadu* and NDTV, and the difference they have made to the situation.

The convention failed to note that women in sufficient numbers are not taking advantage of the provisions of the RTI Act, or what steps could be taken to correct the situation. It also failed to look at why the academic community has not been taking a real interest in studying the impact of the RTI Act and in promoting it.

There was no evidence of annual reports of Information Commissions in these four years ever having been discussed in Parliament or in State Assemblies. How is it so? It should be examined how many Commissions could not come up with their

annual reports and why even the annual reports that were available did not make any difference.

In his valedictory address, Minister of State in the Ministry of Communications and Information Technology Sachin Pilot talked about the shift in the balance of power and the equitable growth that the RTI Act should strive for. He wanted the RTI movement to take advantage of communication technologies.

### **Conventions and sessions**

The CIC has been holding annual conventions in Delhi as an “official programme,” attended mostly by Information Commissioners, their staff, one or two Ministers and bureaucrats. The participation of civil society representatives has been marginal: those who did come were mostly from the National Capital Region. There has not been any acknowledgement of the role of civil society organisations in taking the RTI movement forward. At all the five conventions in Delhi, access was controlled. The CIC, nevertheless, deserves praise for holding the conventions.

This writer had the opportunity to take part in all the five official CIC conventions held in New Delhi as well as in organising five Open House sessions on the RTI in Hyderabad. The Social Audit Council of Andhra Pradesh, comprising a group of civil society organisations and backed by CMS, has been holding annual Open House meetings over the last five years on the implementation of the RTI Act. These were open to anyone but were attended mostly by RTI activists from the districts. The deliberations were based on their presentations and insights to realise the potential of the Act. At least one activist from each district gave such a review. A couple of bureaucrats concerned with the implementation of the RTI Act were specially invited to the Open House. V.S. Ramadevi, former Governor of Himachal Pradesh and Karnataka, was the chief guest in 2006. Wajahat Habibullah, Shailesh Gandhi, C.D. Arha and freedom fighter Purshotham Rao were the chief guests in the subsequent years. The State Information Commissioners were invited to all the five events, although only one or two chose to attend. Each year the Open House sessions honoured activists, officers and mediapersons for their initiatives in taking the Act forward.

The Fifth Open House session in Hyderabad on August 23, 2010, came up with some specific suggestions on the threats against and the killing of activists. It decided to prepare a directory of activists district-wise, form a network of activists, create a website, start counselling centres in districts and launch a helpline.

The sixth convention in 2011 in New Delhi should be an Open House. The participants should be predominantly from civil society, and include academics and women's groups in particular.

*(Dr. N. Bhaskara Rao is the Chairman of CMS based in New Delhi.)*

**17<sup>th</sup> September, 2010**

**Info panel chief ran up 23L travel tab in 5 yrs**

*The Times of India*

NEW DELHI: Chief information commissioner [Wajahat Habibullah](#) spent over Rs 23 lakh on foreign travel to countries including [Oman](#), [Pakistan](#), [Thailand](#) and three trips to the US to promote transparency during his five-year stint.

The travel bills of other information commissioners taken together do not cross Rs 18 lakh, an RTI reply from the Central Information Commission showed.

The airfare for Habibullah's travel to speak at the Brigham Young University at Provo, [Utah](#), and Harvard University at Boston was over Rs 7.83 lakh, the reply, contained in over 200 pages, showed.

Interestingly, the visit took place in March 2007 when austerity measures were imposed by the government. Other incidental expenses of this tour were Rs 31,200, the reply said.

He undertook another four-day tour of the US in May 2008 to attend a conference in [Miami](#) and to address representatives of World Bank, IMF and Inter-American Banks. The air travel cost Rs 6.84 lakh and the incidental expenses were Rs 1.30 lakh, the reply accessed by Mumbai-based RTI activist Girish Mittal said.

Incidentally, Habibullah has been appointed by the [World Bank](#) as a consultant on its panel for arbitration on RTI cases. He will take up the position next month after his retirement as [CIC](#).

Information commissioner A N Tiwari went to Wellington, New Zealand, in 2007 for a three-day international conference of ICs. The airfare was Rs 2.74 lakh while the incidental expenses were Rs 20,000.

He went to [Mexico City](#) in 2008 to deliver keynote address at Mexico's National

Transparency Week for which Rs 6.96 lakh was spent on air travel while incidental expenses were nearly Rs 41,000, the documents showed.

Former IC Padma Balasubramanian visited the UK to attend an international conference of information commissioners on which over Rs 3.31 lakh were spent. Balasubramanian was accompanied by another former information commissioner O P Kejriwal who spent nearly 1.80 lakh which is half the amount spent by her.

IC Shailesh Gandhi visited Dhaka to attend a conference on 'Right to Information: Law, Institutions and Citizens' on which a little over Rs 1 lakh was spent, the reply said.

**20<sup>th</sup> September, 2010**

**Who will protect the whistleblower?**

*The Times of India*

About a month after activist Amit Jethava was murdered, the Central government came up with a legislative proposal to prevent such tragic killings. The dead man was an environmentalist and died because he campaigned to save Gujarat's Gir lion reserve from the ravages of illegal mining. The Bill introduced in the Lok Sabha on August 26 expanded the definition of whistleblower. It said anyone who makes a "public interest disclosure" is a whistleblower.

It was a great leap forward from where we stood till then. Under the 2004 Cabinet resolution, only a public servant could be a whistleblower. But the expanded definition is the only real positive change in the official attitude towards whistleblowing. In other respects, "the public interest disclosure and protection to persons making the disclosure Bill, 2010", to call it by its real name, is anodyne. The Bill's biggest weakness is that it retains the Central Vigilance Commission (CVC) as the designated agency or "competent authority" to deal with complaints filed by whistleblowers. The CVC is also meant to protect whistleblowers. Both provisions are carry-overs from the 2004 Cabinet resolution on whistleblowing.

**20<sup>th</sup> September, 2010**

**Dangerous nexus to bully RTI activists**

*The Hindu*

Next month, the Right to Information (RTI) Act, 2005, one of the most powerful laws enacted in independent India, completes half a decade in the cause of transparent and accountable administration. It enables, on demand, access to information the State and Central governments have in their possession. It empowers Indian citizens to ask for and get specific information, subject to certain norms, from a Public Authority, "thus making its functionaries more accountable and responsible." Democracy, proclaims the Act, "requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold the governments and their instrumentalities accountable to the governed."

For the thousands of social and political activists across the country committed to clean and corruption-free governance, the Act came as a powerful tool. They could drag to the courts anti-social elements such as smugglers, miners, land grabbers and, more particularly, corrupt government officials, through public interest litigation petitions and bring them under judicial scrutiny on the strength of the information they get under the RTI Act. Corruption is a gigantic problem in India. About 25,000 cases filed under the Prevention of Corruption Act were pending in the trial courts across India in 2008. A study has found that it would take three to four years and 200 special courts to clear this backlog. Besides social activists, journalists have been increasingly using the RTI route to dig out relevant documents in pursuit of investigative stories.

But the real potential of the Act is yet to be realised. Chief Information Commissioner Wajahat Habibullah pointed out at a recent convention that a major challenge before the transparency regime was monitoring the implementation of Section 4 of the RTI Act, which has made proactive disclosure of information by various government departments mandatory.

Another point highlighted by the CIC with deep concern was "the emerging threat of murder" of those who tried to take on persons with vested interests in different States. He wanted "the RTI brotherhood" to devise a defence mechanism to deal

with this menace. The press has reported that at least eight RTI activists were murdered and a ninth found dead in the last eight months. Union Law Minister Veerappa Moily, while inaugurating the convention, announced that a law to protect RTI activists would be brought in soon. He also said that under a draft Bill cleared by the Cabinet, the onus of protecting the identity of such whistleblowers would be on the CIC.

#### Whistleblowers killed

The news media, particularly NDTV and CNN-IBN, played a significant role in bringing to light the brutal murders of the RTI activists when they exposed or sought to expose the misdeeds of several wealthy and highly connected persons on the strength of the documentary evidence they could get, thanks to the RTI Act. The latest victim was Ramdas Ghadegavkar, a Shiv Sena leader based in the district town of Nanded in Maharashtra. He was found dead on August 27 under mysterious circumstances. An RTI activist, Ramdas made a number of successful interventions in complaints of corruption in the functioning of the Public Distribution System and in the distribution of fuel. He was also active in exposing the powerful sand mafia; his complaint led to initiation of action by the district administration against the mafia.

A month earlier, on the evening of July 20, 2010, another RTI activist and environmentalist, Amit Jethwa (33), was shot dead by some unidentified men on a motorcycle outside the High Court of Gujarat. His crusade against illegal mining in the Gir forest is suspected to be the reason of the murder. A few weeks prior to this incident, the High Court of Gujarat, on a petition from Jethwa, had cancelled the promotion of J.K. Vyas as Director (Environment) on the grounds that it was unconstitutional. The first arrest in the case was made only seven weeks after the murder. The arrested person, Pratap alias Shiva Solanki, is related to an Opposition Member of Parliament. Social activist Aruna Roy, a key campaigner for the Right to Information Act, told NDTV that whistleblowers faced the biggest threat from the nexus between corrupt officials and the mafia.

Vishram Laxman Dodya (50), a Surat-based shopkeeper, was killed on February 11 for refusing to withdraw his RTI application for information on illegal electricity connections in Surat. Dodya was called to the police station, where officials

unsuccessfully tried to persuade him to withdraw the application. He was shot dead when he was returning home.

In another incident early this year, Satish Shetty (38), a Pune-based activist, was killed because he refused to give up exposing land scams by invoking the RTI Act. He had been unmindful of the repeated threats to him and his family. He was murdered on January 13, when he was out on his morning walk. Satish Shetty rose to prominence when he exposed corruption in land deals a decade ago when the work on Mumbai-Pune expressway was in progress.

Besides these killings, there have been a series of attacks on RTI activists seeking information from the government. These attacks only point to the dangerous nexus built between the corrupt officials and the police on the one hand, and politicians and the mafia on the other, to stifle the voices of the voiceless. The Central and State governments cannot be absolved of their responsibility to protect the RTI activists. Significant sections of the news media, TV channels in particular, have done a good job of spotlighting the cases and the issues. This effort needs to be scaled up and sustained.

**28<sup>th</sup> September, 2010**

**RTI activists urge ICs to disclose assets**

*The Times of India*

New Delhi: In a move to bear down pressure on information commissioners, RTI activists have kickstarted an online petition urging the transparency watchdogs to disclose their income assets. Incidentally, chief information commissioner Wajahat Habibullah said he would raise the issue in a meeting with other information commissioners on Tuesday.

So far, the Central Information Commission (CIC) has resisted disclosure of assets and liabilities arguing that the information was disclosable under RTI if an individual asked for it but since it related to third party information, the consent of the IC would be required. It has also referred this case to the Election Commission for advice. The petition, meanwhile, is gathering steam. Begun by Jharkhand RTI Forum secretary Vishnu Rajgadia, the petition expresses disappointment at the conduct of information commissioners. "We all hope that there are some ICs at states and central level, who do not consider this designation merely as an authority for money, power and honour but they are aware that their designation holds a duty towards democracy and citizens," the petition said.

Signed by activists across the country including those in Delhi, Puducherry and Orissa, the petition asked all central and state information commissioners to "disclose own assets so that the accountability parameters may be strengthened", desist from using beacon lights on cars as a status symbol and stop maintaining personnel security. The activists have demanded "more public oriented and accountable" ICs.

When contacted, Habibullah said he planned to raise the issue in Tuesday's meeting. "There is no problem in disclosure of assets. The commission only feels that third party should be consulted before the information is given under RTI," he said.

He added that beacon lightcars had been given to ICs keeping in view their stature.

"We wanted to establish the stature of the ICs and this was felt necessary. But I disagree with the need for security," he said, adding that ICs at the CIC did not have any security cover but those in states might have.