



Volume II Issue V

November - December 2008

Contents

- ✓ Right to Information: The Greatest Change Maker.....2
- ✓ CBAI Focus State: Nagaland5
- ✓ Right to Information Quiz.....7
- ✓ Feature: Public Concern for Governance Trust [PCGT].....7
- ✓ Editorial & Design Team.....8
- ✓ Featured Resources....8

From the Editor's Desk

Dear Reader,

Several members of the 'RTI Cell' at 'CGG, Hyderabad' happen to interact – from time-to-time – with 'Public Information Officers' (PIOs) and 'First Appeal Officers' (FAOs). These interactions are either direct (i.e. through their participation in various workshops or other events organised) or indirect (i.e. through the 'Resource Persons' trained at various levels under the 'CBAI Project').

In several of these interactions, we do realize that the PIOs / FAOs tend to falter in applying the 'RTI Act, 2005' in its totality or in its 'letter and spirit'. This may be the case, not only with those who have not received any training on the 'RTI Act, 2005' so far, but also with those, who in spite of having had training, are not able to keep up with the developments to have taken place as the RTI regime has unfolded over time.

More specifically, they have missed out on the various cases (to have emerged in the States and at the National level) having significant ramifications for the expectations citizens have from this Act as also on the decisions of the 'Central / State Information Commissions' (ICs) covering a wide gamut of issues and involving interpretation of many key terms / provisions of the 'RTI Act, 2005'.

'CGG and its CBAI-Project-partners have carried out and would be carrying out the task of documenting – as far as possible – various cases / success stories. These efforts will continue in the future.

CGG has a small but dedicated team working on preparing and updating a "Case Law Directory". This endeavour has focused, mainly, on summarizing the decisions of the 'Central IC' and classifying them Section-wise for easy reference. Efforts are underway to include key decisions of some of the 'State IC' as well. This resource is available on our RTI portal [<http://www.rti.org.in/CaseDirectory.do>]. We hope that the demand for this resource will rise in the future and that we would be able to access resources to extend this effort to cover more number of State ICs.

We believe that a variety of stakeholders of the RTI implementation regime, especially, the PIOs and FAOs could benefit from this resource and keep themselves updated. To these stakeholders, among our readers, we request to visit our portal; make use of this resource; and offer suggestions to improve upon it. For our other readers, our request would be to spread the word.

Book Post

Right to Information: The Greatest Change Maker

-- Srinivas Madhav, Consultant (RTI), madhav@cgg.gov.in

A milestone of great importance in the evolution of Indian democracy,^[1] the Right to Information Act (RTI Act), has been in force for over three years. The law mandates two ways of information sharing: proactive dissemination and reactive disclosure of information. Though the former is not yet to be evaluated, people have been testing reactive disclosure by filing requests and tasting some success.

Nine year old Pranav forced Delhi police to register a First Information Report (F.I.R.) to trace his lost bicycle by filing an application under the RTI Act.^[2] 70 year old Kaniram got his entitlements of food grain under Public Distribution System (PDS) that was denied to him for one year.^[3]

Krishna Devi got her passport extended.^[4] Nannu got his duplicate ration card, Ashok Gupta got a new electricity connection, Prem Sharma obtained new passport and Triveni her PDS entitlements^[5]....Many people found RTI useful in obtaining ration cards, passports, driving licenses, water connections, copies of F.I.R.s and so on, without paying bribes! But Indians are not going to stop there.

Right to Information is a fundamental human right, crucial to human development, and a prerequisite for the realization of other human rights: civil and political rights such as the right to life and liberty, freedom of expression, and equality before the law; and economic, social and cultural rights such as right to adequate food, right to water, right to highest attainable standard of health, right to education. RTI has become a friend in need, making life easier and honorable for common people. The law empowers them to request and access public services successfully.

Krishak Mukti Sangram Samiti in Assam used RTI to expose diversion of food grains from PDS allotted to the poor.^[6] Women in a small village, Banakhandi, in West Bengal filed more than 100 RTI applications to force the administration to start work on supply of drinking water.^[7]

Fourteen houses at Pallavaram municipality in Tamilnadu, which had to wage a protracted battle with the civic body for close to one year for getting drinking water connections, finally managed to get justice, thanks to an application filed under the RTI (RTI) Act and the subsequent intervention of the state information commission.^[8] It is not enough if you get water. It should be of good quality. Recently, National Consumer Disputes Redressal Commission ordered a Municipal Corporation to publish reports on water quality.^[9]

An RTI application has forced Guru Teg Bahadur Hospital in the capital to provide free treatment to an old woman who couldn't afford her surgery. Her son Ali alleged that the hospital had earlier sought medicines worth Rs.30,000 for the operation. Ali filed an RTI application for details of drug stocks and bills. When Ali approached the Delhi High Court, the hospital pledged, before the Court, to operate her free of cost.^[10]

Students forced Union Public Service Commission (UPSC) to disclose cut-off marks, scaling method and model answers.^[11] A recent Decision pronounced by the Central Information Commission (CIC) gives access to, not just your answer sheets, but also your class mate's answer sheets, after evaluation.^[12]

When Rohit Prajapati filed an RTI application asking the Gujarat state government details about Internal Complaints Committees to deal with cases of sexual harassment at workplace in its departments as directed by the 'Supreme Court' ^[13], the officials in many departments woke up and

formed the Committees.[14]

Intellectuals led by SEZ Virodhi Manch and Goa Bachao Abhiyan in Goa sensibly used RTI and obtained crucial documents to launch a successful battle against Special Economic Zones (SEZs) while people lost their lives fighting a similar battle in other states. In the first incident of a reversal of a central policy, eight SEZ proposals in Goa were scrapped by the inter-ministerial Board of Approvals last year.[15]

About 300 RTI applications filed by *Burning Brain Society* about the implementation and enforcement of tobacco control laws and the name of the person responsible for non-implementation made Chandigarh the first smoke-free city not only in India but also in any developing country.[16]

Environment seems to be the main beneficiary! Environmental activist Divya Raghunandan fought for more than 20 months for toxicity, allergenicity data that determine the safety of Genetically Modified Organisms -Genetically Engineered (GE) rice, GE mustard, GE okra and GE brinjal from MNCs obsessed with secrecy; she was even asked to personally inspect documents in the presence of a representative. After CIC had decided in favor of disclosure,[17] the company dragged CIC to the courts. However, the Supreme Court interfered and ordered disclosure of the safety data.[18] Finally, the Genetic Engineering Approval Committee (GEAC) has published voluminous data on bio-safety studies of GE brinjal on its website.[19]

One cannot withhold records simply saying that one lost them. Ministry of Environment & Forests was asked to lodge an FIR to initiate criminal action against those responsible for the alleged loss of documents regarding environmental clearance and other parameters of the *Maheshwar* Hydro Electric Project, Madhya Pradesh.[20]

People had complained maximum penalty under the RTI Act - Rs. 25,000 was not a figure to deter. But the CIC thought differently. CIC imposed penalty of Rs.125,000 on Public Information Officer (PIO) of Daulat Ram College, Delhi for delay in supply of information in connection with five separate RTI applications by Prof. Pramila Sharma.[21]

In a landmark Decision, compensation was awarded to an old woman by the CIC for non-publication of information of beneficiaries on the Old Age Pension Scheme under the mandatory proactive publication.[22]

CIC directed the Benaras Hindu University to admit Dhananjay into post graduate course, who was earlier denied admission because he filed an RTI application, to ensure that an applicant seeking information from the University under the RTI Act is not victimized in future.[23]

Another student used RTI to get her degree successfully from a university in Tamilnadu. Though she had appeared in an examination along with other students a few years ago, she did not get her results as her answer sheet sent for valuation to a professor of an outside university had been misplaced. When Tamilnadu Information Commission directed it to pay a few lakhs as compensation, the university authorities immediately conducted an examination for the student and awarded her degree after evaluation of her answer paper.[24]

Culture of Secrecy? ... What is it?

Experts argue that it is very difficult to break the culture of secrecy and create a culture of openness. It is said that Canada and Australia, which enacted the Freedom of Information laws more than 20 years ago, continue to struggle with this problem. But that is not the case with India! In earlier days, employees feared that RTI might overburden them. But now none is surprised to find more number of applications being filed by the employees themselves. Recently, Directorate

of Education (GNCT of Delhi) was asked to pay compensation of Rs. 50,000 to a teacher suspended on false evidence.[25]

Evaluated answer sheets, Departmental Promotion Committee minutes, Annual Confidential Reports, transfer guidelines, arrears and what not... RTI has become an efficient in-house grievance redressal mechanism. Heather Brooke, FOI activist in U.K., points out, "The current system only rewards the corrupt and inefficient. If you are hard working, it is to your benefit to have transparency".

And it helps you even after your retirement. Shyam Karan Yadav in Azamgarh in Uttar Pradesh used the RTI Act to seek information regarding why the retirement benefits to his paralytic father were held back even after two years of his retirement and got the benefits released. His father had retired from school in June 2006 but when he claimed his PF funds, the school management did not act on his application. It was only after an appeal was filed with the State Information commission that the management acted on. The case was finally disposed off by the information commissioner (IC), Brijesh Kumar Mishra on 28 November 2008. The Act provided the man genuine information by way of which he succeeded in restoring the retirement benefits to his father.[26]

The Prime Minister, Dr. Manmohan Singh sent a very strong message:[27]

Information contributes to knowledge. Information also confers power. Information is undoubtedly a great economic asset. ... A pro-active policy of disclosure will be in keeping with the spirit of the RTI Act. Information collected at huge cost, with the tax payers' money, should be made available to the general public without their having to ask for it. This will improve the quality of the data as it will be subject to informed public scrutiny.

Later he restated his commitment at the third Annual Convention on RTI:[28]

Our Government takes great pride in the implementation of the Right to Information Act. It is often said that in modern society information is power. By sharing that information with the people at large, we are therefore, proposing decentralisation and participatory governance. It is revolutionary enactment that has placed huge powers in the hands of the ordinary citizen of the country to demand a transparent and accountable administration.

Transparency benefits the poor greatly by protecting their rights and dignity. Information constantly supports their struggle for survival. Any step to strengthen the 'sunshine movement' will ultimately make our democracy more people-friendly. History will respect the leaders who make people powerful!

[**Note:** Open Decisions -- Digest of Landmark Decisions of the Central Information Commission and State Information Commissions and Judgments of the Courts is available at <http://www.rti.org.in/CaseDirectory.do>]

[1] The Prime Minister Dr. Manmohan Singh's address at the Valedictory Session of National Convention on First Year of RTI on 15 Oct.2006: "This is indeed a milestone of great importance in the evolution of Indian democracy and I am delighted that we are meeting today to mark one year of implementation of this historic Act."

[2] Anumeha Chaturvedi, CNN-IBN, with inputs from Amit Pandey <http://www.ibnlive.com/news/india/06_2007/kid-uses-rti-to-trace-lost-bicycle-42517.html>, accessed 11.6.2007

[3] Aruna Roy, 'The Journey begins', <<http://www.cnfonline.org/2005/2005v13n483.html>>

[4] CIC/OK/C/2006/00147- 8 November 2006

[5] http://www.parivartan.com/stories_list.asp

[6] Samudra Gupta Kashyap, 'After Right to Information disclosure, raids reveal PDS rice in godown', <<http://www.indianexpress.com/story/254593.html>>

[7] *Business Standard*, Village women use Right to Information to get drinking water, 3 Oct.2008

[8] 'RTI brings water to 14 houses in Pallavaram after a year-long wait', Jayaraj Sivan, *Times of India*, 4 Dec. 2008, <<http://timesofindia.indiatimes.com/rssarticleshow/msid-3790159.prtpage-1.cms>>

[9] Consumer Education & Research Society & Ors. v Ahmedabad Municipal Corporation & Ors. [Original Petition Nos.125 & 126 of 1994, 30 April 2008]

- [10] *Times of India*, Right to Information effect: GTB to treat woman for free. 26 Sep.2008
- [11] 354/IC(A)/2006-13 Nov. 2006
- [12] CIC/MA/C/2008/00221, 9 June 2008
- [13] *Vishakha and Others v State of Rajasthan and Others* (1997)
- [14] <<http://epaper.timesofindia.com/Daily/skins/TOI/navigator.asp?Daily=TOIA&login=default&AW=1209399000546>>, 28 April 2008
- [15] Rifat Mumtaz and Madhumanti Sardar, 'Goa: How the battle was won', Info Change News & Features, <<http://www.infochangeindia.org/features475.jsp>>, accessed 23 March 2008
- [16] <<http://www.burningbrain.org/>>
- [17] CIC/WB/A/2006/00548, 13 April 2007 and 25 Nov. 2007
- [18] <www.genecampaign.org>, accessed 23 March 2008
- [19] <http://www.envfor.nic.in/divisions/csurv/geac/approved_data.html>
- [20] CIC/WB/C/2006/00102, 16 Oct. 2006
- [21] CIC/OK/A/2006/00013, 2 July 2007
- [22] CIC/WB/C/2007/00803-00806 & 00887-00896, 3 March 2008
- [23] CIC/OK/A/ 2006/00163, 19 Oct. 2006
- [24] <<http://www.thehindu.com/2008/09/20/stories/2008092055370600.htm>>, 20 Sep.2008
- [25] 1111/IC(A)/2007, 3 Aug. 2007
- [26] *Times of India*, 'Teacher gets PF benefits by using RTI', 3 Dec. 2008, <<http://timesofindia.indiatimes.com/articleshow/msid-3786103,prtpage-1.cms>>
- [27] Addressing the Conference of States and UTs on Management of Statistics on 9 September 2008
- [28] The third Annual Convention on Right to Information (RTI) was inaugurated by the Prime Minister Dr. Manmohan Singh on 3 Dec. 2008. The theme of the Convention was "Right to Information and its Ramifications for Good Governance."

CBAI Focus State: Nagaland

- *Nagaland* belongs to the second phase of the 'CBAI Project'. It could start its State-level-project-related activities only in the third quarter (October - December) of 2007-08. Same was the case with the two project districts i.e. *Dimapur* and *Mokokchung*. In the second quarter (of 07-08), however, *YASHADA, Pune* had completed training of 25 State Resource Persons' (SRPs) in the State.
- The State 'Administrative Training Institute' (ATI) of Nagaland, which is the 'State Implementing Agency' (SIA) for the Project started with the Training of Resource Persons and with a State-level Workshop these were which were followed in the subsequent quarter by activities related to dissemination, which included translation of the 'RTI Act, 2005' in the local language and bringing out 2 television advertisements.
- The first two quarters of 2008-09 were very busy for the SIA – from the point of view of working on the CBAI Project components. In the first quarter, the SIA trained about 90 persons including representatives of Public Authorities (PAs) and NGOs. It also carried out distribution of about 15,000 Pamphlets and about 1,600 copies of the Act and related Guides and Manuals. It was rather early in the Project (compared to many State of Phase - II) that the SIA carried out an 'Audit of Proactive Disclosures'. 13 PAs were covered during this exercise.
- In the third quarter, more that 350 persons (including public officials and NGO representatives) were trained and the SIA. It also brought out a Directory of PIOs / APIOs covering 177 PAs. About 2,050 copies of the 'Act' and related Manuals were distributed to various stakeholders during this period. 2 'Information Fairs' were also conducted. SIA's activities in the next 2 quarters, however, have not gone beyond distribution of copies of the 'RTI Act, 2005' to various stakeholders and translation of one of the related Manuals into the local language.
- Though the SIA has been very prompt and regular in its reporting, it is found that activities of the DIAs for the year 2008-09 have not been reported, yet, on the 'Online Project Monitoring System'. Moreover, DIAs' activities (for the year 2007-08) – as reported – so far have been restricted, largely,

Answers to Quiz in Volume II, Issue IV

1. *Suo motu disclosure* of information as required by S. 4(1); (2); (3); and (4), which may be useful to a citizen before or after having made an RTI application to a Public Authority (PA). For a 'Public Information Officer's' (PIO's) response to a citizen's application under the 'RTI Act, 2005' (submitted along with the application fee as applicable), there are four possibilities: i) all the information sought is provided; ii) no information is provided; iii) partial information is provided; and (iv) payment of prescribed / further fee (as applicable) – as determined by the PIO – is required. In all these cases reasons (for the decision) as also all necessary information regarding the appellate authority (including the appeal timelines) must be provided. In case of (iv), details of fee calculated and the amount of fees to be paid must also be conveyed. In case of (iii) all related information including name and designation of the decision-maker; the details about the Information Commission (IC) [as applicable]; and any other form of access needs to be provided.

Where the representation of a 'Third Party' about disclosure of 'third party information' is involved, the PIO shall have to give in writing the decision taken by her / him about whether or not to disclose the information. It is only appropriate to expect that a PA would maintain a copy of all the rules applicable to its compliance of the 'RTI Act, 2005' should a citizen / an applicant want to peruse them. It is expected of a PA that it would provide for necessary resources – to its PIOs – for this.

2. No. The 'RTI Act, 2005' does NOT carry any provision stipulating any audit of its implementation.
3. The 'RTI Act, 2005' defines 'information', but NOT 'personal information'. However, it includes 'personal information' within the category of "exempted information". Thus, if a PIO receives an application under the 'RTI Act, 2005', which s/he considers to be 'personal information', s/he can reject the application entirely / partially – to the extent that the exemption, in point, would apply).
4. The 'RTI Act, 2005' refers to 'protection of action in good faith' being applicable to any person for anything done in good faith or intended to be done under the 'RTI Act, 2005' or any rule made thereunder. It is obvious that it would apply to any or all of the implementing stakeholders – 'Assistant PIO'; PIO; 'First Appeal Officer' (FAO); any other official of one or more PA(s); 'Information Commissioners' who may be involved in the disposal of an application or in carrying out any responsibility toward complying with any provision(s) of the 'RTI Act, 2005'.
5. The provisions of the 'RTI Act, 2005', that can be said to be pertaining to – directly or indirectly – ensuring the independence and impartiality of 'Information Commissioners' are as follows: The appointment of the Central and State Information Commissioners is made by the 'President' and the 'Governor of the State' concerned respectively on the recommendation of a committee comprising – (i) the 'Prime Minister' or the 'Chief Minister' – as the case may be; (ii) the 'Leader of Opposition' in the 'Lok Sabha' or the 'State Legislative Assembly' as the case may be (and if the 'Leader of Opposition' has not been recognised, the Leader of the single largest group in opposition of the Government in that house); and (iii) A 'Cabinet Minister' nominated by the 'Prime Minister' or the 'Chief Minister' – as the case may be.

The 'Central / State Chief Information Commissioners' (assisted by the 'Central / State Information Commissioners') may exercise all such powers and do all such acts and things, which may be exercised or done by the Central / State IC without being subjected to directions by any other authority under the 'RTI Act, 2005'. An 'Information Commissioner' shall NOT be a Member of 'Parliament' / 'State / Union Territory Legislature'; shall NOT hold any other office of profit or be connected with any political party or carry any business or pursue any profession.

...contd. on pg. 8...

Right to Information Quiz

1. What is the requirement regarding an 'Information Commission' (IC) giving a notice of its decision?
2. Can a PIO be fined for disclosing 'Third Party Information' without consulting at all with the latter?
3. Is there any provision in the 'RTI Act, 2005' for compensating a 'Third Party' if a PIO mistakenly or maliciously discloses any 'Third Party Information'?
4. Is it right for an 'Assistant Public Information Officer' (APIO) to decide upon the applications filed under the 'RTI Act, 2005'?
5. What is the reason behind designating 'Post Offices' as APIOs for 'Central PAs'?
6. Given that 'Post Offices' have been designated as Central APIOs, does this mean that 'Central PAs' cannot have other APIOs?
7. Is there any provision in the 'RTI Act, 2005' about expediting the hearing and disposal of First and / or Second Appeals in case they pertain to a citizen's RTI application on (a) matter(s) related to her / his life and / or liberty?

Note: Find answers to this quiz in the next issue.

Please visit 'R2I NET' for a detailed account of our activities and related updates at www.rti.org.in or at www.r2inet.org

Feature: 'Public Concern for Governance Trust' [PCGT]

PCGT was established in 2002 in Mumbai, by some of the city's eminent citizens, with the objective of 'supporting laws and policies, which promote honesty; transparency; and accountability in governance'. Its mission is to 'make India a value-based; equitable; corruption-free; just; and compassionate society.

RTI is obviously one of the key focus areas for PCGT. For creating awareness among the people, it has been organising camps and seminars in schools; colleges; corporate houses as well as at public places – the latter including local railway stations and community areas. Incidentally, this activity of PCGT has been supported by 'Sir Ratan Tata Trust'.

In using RTI as the most powerful weapon in its fight against corruption, PCGT is also working with community groups; women self-help groups; and media to spread the message of the 'RTI Act, 2005' even as it assists (in several ways) those people who are willing to use their right under this Act. PCGT claims that till date, thousands of people have participated in and benefitted from the workshops and seminars that it has organised.

Along with other organisations, PCGT took played an active part in the 'National Anti-Bribery Campaign', which was organised, simultaneously, in more than 20 cities of India. In the Mumbai campaign, 252 of its volunteers facilitated the filing of 2,222 cases in 15 days.

More information regarding PCGT's current projects; its achievements; and the success stories it has facilitated are available on its website. The URL of the website is www.pcgt.org

Editorial & Design Team

Dr. Rajiv Sharma, IAS
DG & ED, CGG

Mr. Vardhaman Vaidya
NIA Advocacy / Dissemination / Training, CBAI

Mr. Siraj-ur-Rehman
OSD, CGG

Answers to Quiz... Contd. from pg. 5...

No 'Chief Information Commissioner' is eligible for reappointment. Other 'Information Commissioners' are also not eligible for reappointment as such and can only be appointed as the 'Chief Information Commissioners' of the IC concerned.

Further, there are clear stipulations – in the 'RTI Act, 2005' itself – regarding how an 'Information Commissioner' can be removed or suspended from office. The 'RTI Act, 2005' also says that the salaries, allowances and other conditions of service of 'Information Commissioners' shall NOT be varied to their disadvantage after their appointment.

6. The 'RTI Act, 2005' has no provision for imposing a fine on a PIO for providing 'exempted information'.
7. The 'RTI Act, 2005' and or the relevant 'Rules' / 'Guidelines' [of 'Appropriate Government(s)'] are silent on the matter of an other official or a PIO of a PA sending back an application which may have been forwarded by a PIO due to an error of judgment regarding the other official or PIO being able to provide the information sought on account of being more closely connected to the subject in question. Incidentally, this may be said to be a grey area or an issue on which it would be helpful to have proper clarification coming through an authoritative process.

We Invite You to Share:

- Your ideas / comments on the 'RTI Act, 2005' or the 'CBAI Project';
- Your experiences in using / implementing the 'RTI Act, 2005';
- Other inputs in the form of relevant photographs / video footages.

You may send your inputs to:

Right to Information Cell (RTI) Cell,
Centre for Good Governance (CGG),
Road No 25, Jubilee Hills,
Hyderabad – 500 033.

E-mail: nia@cgg.gov.in

Featured Resources

Web

- www.rti.org.in
- www.pcgtr.org [Public Concern for Governance Trust]
- *'Global Sourcebook on Right to Information'* (1st Edition – 2006) Wadia Angela, 'Kanishka Publishers Distributors', New Delhi.

Note:

We receive several requests for the dispatch of the latest as well as previous of our publications (including our Newsletter – 'RTI TIMES').

We request our readers to, kindly, note that the soft copies of all our publications are available on and freely downloadable from our 'Web Portal' on RTI.

The URL for this 'Web Portal' is www.rti.org.in



Disclaimer

While all efforts have been made to ensure that the information presented in this Newsletter is accurate, yet, no warranty is assumed for either its completeness or its fitness for a particular purpose.

All opinions and views expressed in this Newsletter are personal and do not, necessarily, represent any policy or position of any organisation.