

# RTI TIMES

**Volume II Issue III**

**July - August 2008**

## Contents

- ✓ Social Audit of Welfare Schemes: RTI and Public Hearing.....2
- ✓ Information: Lower the Dose – Greater the Risk of Side-Effects.....3
- ✓ Answers to Quiz in Volume II, Issue II.....5
- ✓ CBAI Focus State: Orissa.....6
- ✓ Right to Information Quiz & Trivia.....7
- ✓ Editorial & Design Team and Featured Resources.....8

## Book Post

## From the Editor's Desk

**Dear Reader,**

Bihar's "**Jankari**" initiative – piloted in January 2007 – remains till date a one-of-its-kind initiative making the State not only the first-mover, but also the only State in the country to have a 'Call Centre' to facilitate its implementation of the 'RTI Act, 2005'.

Some recent media reports, however, point to a realisation that this is an idea – the time for whose replication has come! '**Jankari**' is said to have alleviated at least 3 factors that could, possibly, discourage a citizen from filing an RTI application viz: writing an 'RTI Application'; commuting to the Public Authority (PA) or to an 'Information Centre' to submit the application; and buying 'Postal Orders' or 'Demand Drafts' for paying fees.

Given CGG's efforts – as the 'National Implementing Agency' on the 'CBAI Project' – toward advocating what is good for RTI and also in our anticipation of being called upon to provide inputs for '**Jankari**'s', possible, replication in *Andhra Pradesh* (AP), we would like to know more about how '**Jankari**' has been helpful to its users. We do plan to organise a 'discussion group', on this topic, which might lead us to carrying out a detailed study of this initiative.

'CGG, *Hyderabad*' has some experience with devising and operationalising the 'Call-Centre-model' as a key component of a 'grievance redressal system' – developed and deployed by it in many municipalities in AP. Known as the 'Online Grievance Redressal Tracking System'; the model was piloted (in 2005) in 10 municipalities and is, now, functioning for 250 municipalities. We do have some learnings from this experience of ours...

It would be very helpful, indeed, to know about the experiences of those who have had an occasion to use '**Jankari**' to exercise their RTI, or of those who happen to have studied the initiative or known about its functioning. We request you to share – with us – your thought(s); idea(s); opinion(s); experience(s); or research findings (if any) on how an 'RTI Call Centre' functions, or how it would or should function – if operationalised nationwide (for all the Central / State PAs) and if it is to cover, possibly, not only the citizens' RTI applications, but also their 1<sup>st</sup> and 2<sup>nd</sup> appeals.

While at seeking your advice, we reiterate our request for your feedback on how '**RTI TIMES**' has been faring! May we add that when it comes to your feedback – the more the merrier!! Be it a compliment or a complaint, it helps us learn and improve!!!

## Social Audit of Welfare Schemes: RTI and Public Hearing

Several issues of 'RTI Times', in various sections therein, have dwelt upon the linkages between people's 'Right to Information' and its use for 'Social Audit' as a tool for 'Social Accountability'.

Use of RTI becomes significant for 'Social Auditing' in cases where RTI is used to obtain relevant documents / records from 'Public Authorities' (PAs), which are then presented – during a 'Public Hearing' – before the key stakeholders concerned – for establishing the veracity of what is stated in the records (or to find out whether the records have been cooked / forged). Among the stakeholders present, could also be Government officials who are called upon to offer explanations for the discrepancies that may be found between what is said in the records and what is the ground reality.

This 'Social Audit' methodology – as most of us are aware – has been tried out on a large scale for scrutinising, as it were, the works taken up under the 'National Rural Employment Guarantee Scheme'. An early success for this methodology came about during the 'NREGS Social Audit' in the *Ananthapur* district of *Andhra Pradesh* (AP). This audit was carried out for the 'Department of Rural Development' – jointly – by the '*Mazdoor Kisan Shakti Sanghatan*' (MKSS) and 'ActionAid, India'. Subsequently, 'NREGS Social Audit' was extensively carried out in AP under the DfID-sponsored, Government of AP (GoAP)-supported 'Delivery of Improved Services in Administration' Programme.

Under the same Programme, a project has been undertaken by 'Centre for Good Governance', *Hyderabad* to adapt this 'Social Audit' methodology for two of the flagship schemes of the 'Department of Backward Classes (BC) Welfare', GoAP viz (i) 'Post – Matric Scholarship'; and (ii) 'Reimbursement of Tuition Fee'. For the pilot, four colleges from two districts – *Hyderabad* and *Ranga Reddy* – were selected.



Mr. V. Nagi Reddy, IAS, Prl. Secy. Tribal Welfare Department, GoAP who inaugurated the first Training Programme is being welcomed. Dr. Rajiv Sharma, IAS, [extreme right] Dir. Gen., CGG, Hyderabad was also present during the occasion.



Students of Sri Sarada Deg. College



Students of N M Reddy Engg. College

Two of the early project-related activities were (i) constitution 'Social Audit Teams' comprising students and a 'Civil society Organisation' representative; and (ii) conducting Training for these prospective 'Social Auditors'. An exclusive and intensive session on RTI was conducted during the Training. The participants were told that in course of this pilot, where senior officials had ensured all support from the Department, RTI need not be used. However, it may have to be exercised during subsequent audits to get the necessary information from the Department and / or the colleges.



Students of Maharishi College

A 'Public Hearing' (PH) was organised, post-"on-site-verifications-including-student-interviews", in one of the colleges. Another PH based upon the findings of the on-site-verifications... of the other three colleges is due to be organised soon. The 'Director of BC Welfare', Ms. K. Sunitha, who has led this initiative on behalf of the 'BC Welfare Department', is keen to scale up the initiative to cover several other colleges in several other districts in the near future. **contd. on pg. 8...**

## INFORMATION.....

### *The Lower the Dose – the Greater the Risk of Side Effects*

A news story in the 'Times of India' on August 18, 2008 – '*49 babies die during clinical trials at AIIMS*' – based on certain information disclosed under the 'Right to Information (RTI) Act, 2005', created a lot of furor over the propriety of the premier health care institution in India i.e. the 'All India Institute of Medical Sciences' (AIIMS). The 'Health Ministry' ordered a high-level inquiry into the alleged death of 49 infants during clinical trials.

It seems the 'Public Information Officer' (PIO) in AIIMS, released partial information which shows the AIIMS in poor light. This is a classic example which establishes the principle: *Before answering technical questions, PIO should be careful and disclose 'whole truth', not 'mere truth'.*

S/he should have taken some more care and supplemented her / his answers with adequate explanation and information. Many experts have felt that the disclosure was inadequate to reach a conclusion. A 'Public Authority' (PA) should present complete data instead of just filling in blanks on an application submitted by a requester. All disclosures should be uploaded on a public internet site to avoid any possible mis-representation of facts. Transparency benefits all. The 'RTI Act, 2005' can be used to foster transparency in medical procedures.

The following example shows, however, that it is not that easy: Irving Kirsch, from the 'University of Hull', under the 'U.S. Freedom of Information Act' requested from the U.S. 'Food and Drug Administration' (FDA), information about the clinical trials for efficacy conducted for marketing approval of most widely prescribed anti-depressants approved between 1987 and 1999.

Irving used 'meta-analysis' that combines the results of several studies that address a set of related research hypotheses<sup>1</sup> to put together data from all the trials submitted to the FDA for four drugs: fluoxetine, venlafaxine, nefazodone, and paroxetine and found that the improvement in depression amongst patients receiving the trial drug, as compared to those receiving placebo (dummy tablets), was not clinically significant in most patients who suffer from mild or very severe depression.<sup>2</sup>

Everyone knows that a clinical trial involves risk(s); it is very important the participant knows it. 'Informed Consent' of the participant (here, the parents) is as critical as the medicine itself. The 'Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002' – 'Regulation 7.22' requires adherence to 'Indian Council of Medical Research' (ICMR) guidelines while conducting clinical trials.

ICMR has published 'Ethical Guidelines for Biomedical Research on Human Participants' in 2006, which are guidelines on the information to be disclosed to the participants as well as to the media which, amongst other things, prescribe that *'the investigator must provide the individual with the information in the language she or he is able to understand, which should not only be scientifically accurate, but should also be sensitive/ adaptive to their social and cultural context'*.

Adequate information about such research is to be given in a simple and easily understandable unambiguous language in a document known as the 'Informed Consent Form' with 'Participant / Patient Information Sheet'.<sup>3</sup>

Had AIIMS followed ICMR guidelines, the controversy could have been avoided. The big question is: 'Did it?'



It is important to note that, the 'National Institute of Medical Statistics' (earlier called the 'Institute for Research in Medical Statistics'), established by ICMR, has created the 'Clinical Trials Registry – India' (CTRI), a free and searchable on-line register of all clinical trials being conducted in India. To register clinical trials, a 'data set' should be declared before the enrollment of the first patient in the clinical trial. Thus, information of all clinical trials is publicly available for the first time, which ensures 'transparency, accountability and accessibility of clinical trials and their results' and 'promotes greater trust and public confidence in clinical research'.<sup>4</sup>

According to the 'Drugs and Cosmetics (Amendment) Bill, 2007', which is now under consideration of a 'Parliamentary Standing Committee', a "Central Drugs Authority" will be constituted to, among other things, grant permission for conduct of clinical trials in respect of drugs and cosmetics and recommend to the 'Central Government' measures to regulate clinical trials. The proposed Bill prescribes stringent measures for regulating the conduct of clinical trials. Persons conducting clinical trials without such permission shall be punished with imprisonment for a term, which may extend to five years; and be fined, which may extend to ten lakh rupees.

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Another important aspect is the absence of a level playing field as far as the 'RTI Act, 2005' is concerned. Medical negligence in private hospitals kills thousands of patients in India. But private hospitals are not covered by the 'RTI Act, 2005'. Though required by the 'Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002', it is known that private hospitals do not maintain their records properly and even if the records are maintained, it is very difficult to access them.

It is in view of this that the 'National Consumer Disputes Redressal Commission' had to warn: "[w]e may also observe that in cases of non-supply of the relevant documents, adverse inference could possibly be drawn with regard to deficiency in service".<sup>5</sup>

Does the 'RTI Act, 2005' put the Government hospitals at a disadvantage? Does it allow targeted exposure by the media to focus only on the bad things and letting people to forget the good things about them? For citizens worried about the well-being of the Government health care institutions, this is a great cause for concern!

-- Srinivas Madhav, Consultant – RTI, CGG, Hyderabad  
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**Endnotes:**

1. To know more about the method visit <<http://en.wikipedia.org/wiki/Meta-analysis>>
2. *Initial Severity and Antidepressant Benefits: A Meta-Analysis of Data Submitted to the Food and Drug Administration*, Kirsch I, Deacon B J, Huedo-Medina T B, Scoboria A, Moore T J, et al. PLoS Medicine Vol. 5, No. 2, e45 doi:10.1371/journal.pmed.0050045;  
*Who benefits from antidepressants?*, <[http://www.eurekalert.org/pub\\_releases/2008-02/plos-wbf022008.php](http://www.eurekalert.org/pub_releases/2008-02/plos-wbf022008.php)>; Sarah Hiddleston, *Clinical trials and the right to information*, <<http://www.thehindu.com/2008/03/25/stories/2008032554891100.htm>>
3. Full text of the Guidelines is available at <<http://www.icmr.nic.in/guidelines.htm>>
4. <[http://www.ctri.in:8080/Clinicaltrials/trials\\_jsp/index.jsp](http://www.ctri.in:8080/Clinicaltrials/trials_jsp/index.jsp)>
5. *S. R. Shivaprakash v M/s. Wockhardt Hospital Limited*, [NCDRC-OP No.208 of 1993,4 Oct.2005]

## **Answers to Quiz in Volume II, Issue II**

1. Section 20(1) of the 'RTI Act, 2005' clearly stipulates the grounds that would make a 'Public Information Officer' (PIO) liable to be penalised by the 'Information Commission' (IC) concerned. It also lays down that such penalty shall amount *'to Rs. 250/- for each day till the [RTI] application is received or information is furnished'* and *'shall not exceed Rs. 25,000/-'*.

If violation, on any of the applicable grounds is – without a reasonable cause – (and) persistent, the 'RTI Act, 2005' says that the ICs can **'recommend disciplinary action against the PIO concerned under the applicable service rules'**. Though recommendatory (as against the authority to impose fines – itself), this further authority of the ICs is, no doubt, significant. Moreover, in practice, there have been instances where, ICs have in their decision **issued strictures** against the improper conduct of, not only a PIO, but also a 'First Appeal Officer' (FAO) of a 'Public Authority' (PA).

In some cases, the non-compliance of a given PIO may be partially attributable to the non-preparedness of the PA concerned toward proper implementation of the 'RTI Act, 2005'. In view of this, section 25(5) assumes significance, whereby, an IC can recommend – to a PA concerned – *'such specific steps that ought to be taken by the PA to promote the latter's conformity with the provisions / spirit of the Act'*. Incidentally, section 19(8)(a) details what the ICs may require the PAs to do.

ICs can also direct a PA – as specified in section 7(6) of the 'RTI Act, 2005' – to provide the requested information free of charge if the latter does not comply with the specified timelines. Thus, upon exceeding the applicable timeline, all the expenses to be incurred in providing the information and providing it in the format requested by the citizen, will have to be borne by the PA. Incidentally, as per section 19(b), an IC may require a PA to compensate a complainant for any loss or other detriment suffered by her / him.

2. ICs in hearing complaints or disposing second appeals would carry the same authority as a 'Civil Court' does while trying a suit under the 'Code of Civil Procedure, 1908'. This, as specified in the 'RTI Act, 2005', would mean that ICs can:
  - summon and enforce the attendance of persons and compel them to give oral or written evidence on oath and to produce (oral / written evidence), document(s) or thing(s);
  - require the discovery and inspection of document(s);
  - receive evidence on affidavit;
  - requisition any public record(s) (or copies thereof) from any court / office;
  - issue summons for examination of witness(es) / document(s); and
  - make (a) prescription(s) in any other relevant matter.
3. The grounds for removal of a 'Central / State Information Commissioner' (as per the 'RTI Act, 2005') are misbehaviour [as stated in S. 17(4)] and incapacity – proved in course of an inquiry by the 'Supreme Court' – on a reference made to it by the 'President' / 'Governor' (as applicable – for 'Central / State Information Commissioners' respectively). Moreover, notwithstanding the aforesaid, the other grounds are:
  - being adjudged an insolvent;
  - being convicted of an offence, which in the opinion of the 'President' / 'Governor' (as the case may be) involves moral turpitude;
  - engaging in any paid employment outside the office duties;
  - becoming, in the opinion of the 'President' / 'Governor', unfit to continue in office due to infirmity of body / mind; and

...**Answers to Quiz... contd. from pg. 5...**

- acquiring such financial or other interest as is likely to affect, prejudicially, the functions (to be performed in that position).
- 5. The 'RTI Act, 2005' says that the authority of removing, from office, a 'Central Information Commissioner' can be exercised by the 'President' – by an order. With regard to a 'State Information Commissioner', this authority is vested in the 'Governor' of that State – who is to do so by an order. As mentioned earlier, the grounds for removal have also been specified in the 'RTI Act, 2005'. Moreover, the 'President' / 'Governors' also have the authority to suspend a 'Central / State Information Commissioner(s)' for certain specified reasons.
- 6. The 'RTI Act, 2005' does not specify anything, whatsoever about whether an 'Assistant Public Information Officer' (APIO); PIO or FAO can officiate in each other's position during the temporary absence of any of them from a given PA.  
However, it can be derived from a holistic understanding of the 'RTI Act, 2005' that an APIO CANNOT officiate as PIO or as a 'First Appellate Officer (FAO), for the Act is clear that these should be separate designations with the incumbents carrying out their respective (and separate) functions as specified. It is generally understood that a 'Central / State PA' should designate sufficient number of APIOs; PIOs and FAOs.
- 7. NO (for the reason as stated in 5. above). Moreover, an FAO of a PA is to hear an appeal of an applicant or 'Third Party' aggrieved by the decision of that PA's PIO.... Therefore, an FAO of a PA officiating as a PIO could lead to a clear case of 'conflict of interest' (if it is to be the same person), which for all intents and purposes, would amount to violation of the 'RTI Act, 2005'.
- 8. NO. An FAO shall have to be senior to a(II) (the) PIO(s) in a PA. Moreover, in most cases where the rules framed by the (Appropriate) State Governments have already identified the position(s) (in the organisational hierarchy) that would be designated as APIOs; PIOs and FAOs, this question does not arise.

**CBAI Focus State: Orissa**

- In this "II<sup>nd</sup>-phase-State", the 'State Implementing Agency' (DIA) has been the *Bhubaneswar*-based 'Gopabandhu Academy of Administration', Government of *Orissa* and the selected 'CBAI Project' districts are: *Ganjam* and *Mayurbhanj*.
- As per the reports of the first 3 quarters of the Project year 2007-08, only one activity has been carried out under the Project in the State (on the whole) – i.e. training of 40 'Resource Persons' by YASHADA, Pune. The 4<sup>th</sup> quarter, however, was a busy one at the SIA with the various Project activities being:
  - training – 125 PIOs / APIOs / FAOs / other officials and 105 representatives of NGOs / Media Organisations – on the 'RTI Act, 2005';
  - translating the 'RTI Act, 2005' & a 'Guide' and distributing copies the translated versions;
  - preparing a 'Directory of PIOs / APIOs / FAOs' covering 130 'Public Authorities' (PAs);
  - auditing 'Proactive Disclosures' of 10 PAs and the 'Information Requests & Disposals' of 8 PAs;
  - organising a 'Seminar'; a Talk Show'; an 'Information Fair'; & a 'Multi-Stakeholder Workshop'; and
  - documenting 14 'RTI-specific Case Studies / Best Practices'
- As on 31.08.2008, the SIA is yet to report its Project-specific-activities during the first 2 quarters of 2008-09, whereas the 'District Implementing Agencies' are yet to report their Project-specific-activities since the 4<sup>th</sup> quarter of 2007-08. Till date, these DIAs have not reported any Project-specific-activity.

## Right to Information Quiz

1. If an application for information as per the 'RTI Act, 2005' has to be in writing, does the 'Act' say anything about the medium of language of the application?
2. What kind of assistance can a citizen expect from a 'Public Authority' (PA), specifically, in terms of writing her / his application in a given language?
3. What kind of assistance does the 'RTI Act, 2005' require to be provided to persons with sensory disabilities?
4. If a citizen shall be provided reasonable assistance by a 'Public Information Officer' (PIO) in 'making a request for obtaining information', will similar assistance be provided to a citizen while preferring appeals?
5. What are the provisions of the 'RTI Act, 2005' related to the suspension of an 'Information Commissioner' (other than removal)?
6. How quickly should a 'Public Information Officer' (PIO) communicate to an applicant if the latter is required to pay any further fees for being handed information in a particular format?
7. The 'RTI Act, 2005' extends to the whole of India except the State of *Jammu and Kashmir* – Does it mean that an Indian citizen who is resident in *Jammu and Kashmir* does not have this right?

**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](http://www.rti.org.in) or at [www.r2inet.org](http://www.r2inet.org)

## Right to Information: TRIVIA

In the month of September, the World celebrates the '**International Right to Know Day**'. Its genesis dates back to the year 2002..... September 28, 2002 (to be precise)...

On 28 September 2002, Freedom of Information organisations from various countries around the globe, during their meeting in Sofia, Bulgaria, created a network of 'Freedom of Information Advocates' and agreed to collaborate in promotion of the individual right of access to information, in particular and open; transparent governance, in general.

The group of 'FOI Advocates' also proposed that 28 September be nominated as the "International Right to Know Day" which, as such, would symbolise the global movement for promotion of the 'Right to Information'.

The aim of having a 'Right to Know Day' is to raise awareness of the 'Right to Information'. It is a day, which freedom of information activists from around the world can use to further promote this 'fundamental human right' and to campaign for open and democratic societies in which there is full citizen empowerment and their participation in the Government.



'Right to Know Day' Logo

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## **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,  
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Road No 25, Jubilee Hills,  
Hyderabad – 500 033.

**E-mail: [nia@cgg.gov.in](mailto:nia@cgg.gov.in)**

## **...Social Audit...RTI & PH... contd. from pg. 2...**



A session in progress during the **Training of Social Auditors**.

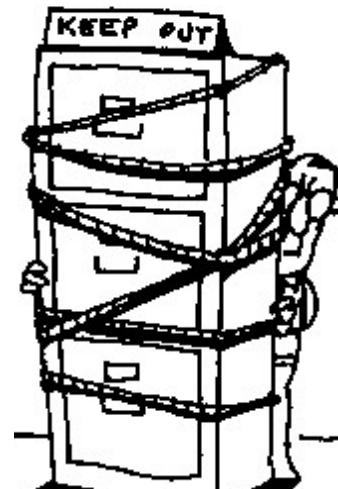
## **Featured Resources**

- [www.rti.org.in](http://www.rti.org.in)
- '**Transparent Revolution – Right to Information in Action**' [2<sup>nd</sup> Edition 2008] by **Srinivas Madhav**. 'Asia Law House', opp. IOB, Bankstreet, Kothi, Hyderabad. [www.asialawhouse.com](http://www.asialawhouse.com)



**Ms. K. Sunitha, IAS** [fourth from left] Director, BC Welfare, GoAP with her team of Departmental officials and the '**Resource Persons**' from '**CGG, Hyderabad**' at the venue of the **Training of Social Auditors**.

**'RTI TIMES' shall – in a subsequent issue – carry more news on this initiative – with special reference to the PHs.**



An  
Impression on  
'Right  
to  
Information'...

...depicting

**why we need it!**

## **Disclaimer**

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