

RTI

The right to know

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The right to know

Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would be all shrouded in the veil of secrecy without any public accountability. But if there is an open government with means of information available to public, there would be greater exposure of the functioning of the government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is a clean government and a powerful safeguard against political and administrative aberration

and inefficiency.

— Observations of the Supreme Court almost a quarter of a century ago (S P Gupta and Others vs Union of India, AIR 1982 SC 1490)

Landmark legislation

In the short span of three years, the Right to Information (RTI) Act, 2005 has proved to be a landmark legislation for the faceless citizen of India. The mere mention of invoking this Act puts fear into the hearts of government officials, who now think twice before denying a citizen her due.

This notable legislation, passed by the United Progressive Alliance (UPA) government on October 11, 2005, extends to the whole of India, except the state of Jammu and Kashmir. It empowers every

citizen of the country to ask for and get details of any publicly funded scheme, project or institution.

Anybody is free to seek information, which is defined by the Act as “material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law”.

The procedure is simple. All that is required is submission of a written, typed or electronically printed application in English, Hindi or any official Indian language, specifying the particulars of information sought. In case a person is not literate, a designated public information officer (PIO) of the organisation / institution concerned is expected to help the person draft the application.

It is mandatory for all public authorities

(PAs) to designate an officer, sufficiently experienced and in the know of things, as PIO at every administrative unit or department under it to provide information to citizens under the RTI Act.

Chief Information Commissioner Wajahat Habibullah has described public authorities as “all those organisations which have accepted public money — they are not only government organisations but also those private organisations and NGOs that have accepted public money and so are answerable to the public”.

PIOs are in place in almost all PA offices, and details can be sourced at righttoinformation.gov.in, the Indian government’s central platform for information about PIOs. A list of PIOs is also available at www.rti.gov.in. There is a provision for sending an RTI application to the head of the department/institution with a request to forward the same to the designated PIO. But in the normal course, the application should be submitted to the

PIO along with the prescribed fee.

No fees can be charged from people living below the poverty line, but for others the prescribed fee under the RTI Act is Rs 10 per application. States are permitted to decide their own fee structures as long as they are “reasonable”. If one wants to inspect documents, there is no fee for the first one hour, but Rs 5 can be charged for every subsequent hour thereafter. PIOs may also seek additional charges for providing photocopies or CDs of information sought.

It is possible that a designated PIO may not have the information readily available. In that case, s/he may seek the assistance of another officer and inform the person requesting the information accordingly. The RTI Act says that any officer whose assistance has been sought by the PIO shall be treated as a PIO.

The PIO is required to provide information within 30 days of the application; 48 hours if it affects the life and liberty of an

individual. If there is no response within 30 days, or the response is unsatisfactory, the information-seeker can file an appeal with the first appellate authority who is a senior officer in the same department. This has to be done within 30 days of getting a response. If the seeker is still not satisfied, s/he can appeal to the state or central information commissioner, the second appellate authority with powers to impose a penalty.

Failure to provide information within the specified period without a satisfactory reason is deemed a refusal. The Act has provisions for the imposition of a fine of Rs 250 per day, up to a maximum of Rs 25,000, on erring PIOs on various grounds — not accepting an application, delaying the release of information without reasonable cause, malafide denial of information, knowingly giving incomplete, incorrect, misleading information, destroying information that has been requested, and obstructing the furnishing of information in any manner. PIOs can deny

information, according to the RTI Act, only if it infringes on the copyright of a person other than the State, or prejudicially affects the sovereignty and integrity of the State. Information forbidden to be published by any court of law, or which would cause a breach of privilege of Parliament or the state legislature can be denied as well. Cabinet papers including records of deliberations within a council of ministers, secretaries and other officers are excluded too, and so is information relating to personal affairs that have no relationship with a public activity or office of a person.

The list of institutions excluded from the RTI Act is long: central intelligence and security agencies like IB and R&AW, special forces like the BSF, CRPF, CISF, NSG, and Assam Rifles, besides special branches of the police like the crime branch, especially in union territories and some border states. Certain agencies specified by state governments through a notification are also excluded. Information on commercial, trade secrets or intellectual property, that could harm the

competitive position of publicly listed corporate bodies, is not liable to be disclosed unless a competent authority is satisfied that the larger public interest warrants it. So, for example, a foreign company needs to disclose only that information which the RBI or any other government regulator under the law can access.

These exclusions, however, are not absolute and organisations have an obligation to provide information on allegations of corruption and human rights violations, but only after approval of the central or state information commission. Though private bodies are not directly within the Act's ambit, the central information commissioner has reaffirmed that privatised public utility companies continue to be within the RTI Act — their privatisation notwithstanding.

The central information commission (CIC) has declared stock exchanges, power distribution companies and the Indian

Olympic Association as public authorities, as they were owned, controlled or substantially financed by the government. It has even deemed political parties as PAs, and wants to determine whether elected representatives including MPs, MLAs and MLCs can be declared PAs and made to respond to questions from citizens under the RTI Act.

All public institutions in the country, government or private, are obliged under the Act to publish within a stipulated period of their constitution:

- Particulars of the organisation, functions and duties.
- Powers and duties of its officers and employees.
- Procedure followed in its decision-making process, including channels of supervision and accountability.
- Norms set by it for the discharge of its functions.

- Rules, regulations, instructions, manuals and records used by its employees for discharging its functions.
- Statement of the categories of documents held by it or under its control.
- Particulars of any arrangement that exists for consultation with, or representation by, members of the public, in relation to the formulation of policy or implementation thereof.
- Statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meetings of these are open to the public, or the minutes of such meetings are accessible to the public.
- Directory of its officers and employees.
- Monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations.

- Budget allocated to each of its agencies, indicating the particulars of all plans, proposed expenditures and reports on disbursements made.
- Manner of execution of subsidy programmes, including the amounts allocated, details and beneficiaries of such programmes.
- Particulars of recipients of concessions, permits or authorisations granted by it.
- Details of information available to, or held by it, reduced in electronic form.
- Particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use.
- Names, designations and other particulars of public information officers.

Constitutional guarantees

The fact that the right to information is included in the constitutional guarantees of

freedom of speech and expression has been recognised by Supreme Court decisions challenging governmental control over newsprint and bans on the distribution of newspapers.

In a landmark case, the petitioners, publishers of one of the leading national dailies, challenged restrictions on the acquisition, sale and use of newsprint, in the Newsprint Control Order. The Supreme Court struck down the restrictions on the basis that they interfered with the petitioners' right to publish and circulate their paper freely, which was included in their right to freedom of speech and expression. In a subsequent case, the Supreme Court held that media controlled by public bodies was required to allow both sides of an issue to be aired.

The right to know has also been reaffirmed in the context of environmental issues that have an impact on people's very survival. Several high court decisions have upheld the right of citizens groups to access

information where an environmental issue is concerned. For example, in different cases, the right to inspect copies of applications for building permissions and the accompanying plans, and the right to have full information about a municipality's sanitation programme have been affirmed.

The overall impact of these decisions has been to clearly establish that the right to freedom of information is embedded in the provisions guaranteeing fundamental rights under the Constitution.

A lot of information that is now available in the public domain was extremely difficult to come by in the past. Officials did their best to withhold it. It would be no exaggeration to say that the RTI Act stands out as the single piece of legislation that has changed the realities of governance in India. With more information about governance publicly available now, there have been several disclosures and indictments of corrupt officials.

"The RTI Act has had a positive impact on the

lives of people like no other Act has done before. More and more people are filing RTI queries to procure information, which was earlier denied by government officials," says activist Shailesh Gandhi, now an information commissioner with the CIC, Delhi.

Indeed, the first comprehensive study of the Act, conducted jointly by the National Campaign for People's Right to Information (NCPRI) and the Right to Information Assessment and Analysis Group (RAAG) covering 10 states besides Delhi, reveals that it is being effectively used by thousands of citizens across India, so much so that governments are struggling to keep up with the significant public awareness and use of the transparency law.

The study, titled 'The People's RTI Assessment 2008', suggests that public authorities can make things much easier for themselves if they periodically assess the type of information citizens want, and put this *suo moto* in the public domain, as required under Section 4 of the RTI Act.

How Saeda Apa fuelled change

The poverty line. You've heard that phrase often. How many people are below it; how many have moved above it. It was 36% below the poverty line once; now it's 26%. The numbers fly about, the debate rages on. But what does it actually mean to live an existence below the poverty line?

Today, 26% of India's population lives below the poverty line. The line is defined for rural India as consumption worth Rs 229 per person per month. In simple words, if you belong to a rural household of five members and your total monthly consumption is less than Rs 1,145 a month, or Rs 11,000 a year, you fall in the below-the-poverty-line category.

Being even slightly above the line will not solve your problems. If your annual

household income crosses the modest sum of Rs 11,000, you are considered to have risen above the poverty line. The line provides a theoretical explanation for looking at the poor as a category to be taken care of through targeted ameliorative programmes.

One such government programme is the provision of subsidised rations to poor families under the public distribution system (PDS). The system itself is not free from corruption, and the media has often highlighted instances of diversion and the black marketing of supplies by unscrupulous shop owners acting in league with corrupt bureaucrats.

The poor, in fact the very poorest, realise that they need access to information as a

practical means of getting what's due to them. Though unlettered, they are neither foolish nor weak nor ignorant. They don't want to know about nuclear missile sites or deep defence deals; they want to know where the millions of rupees worth of grain that was to reach them is going.

A small group of people in Kalol town in Gujarat decided to organise themselves locally to follow the issue.

As part of a larger initiative, they began to file a number of applications under the Right to Information (RTI) Act pertaining to the PDS — ranging from the amount of rations to be provided to above the poverty line (APL) and below the poverty line (BPL) families, and at what rates; the procedure for issue of new and duplicate ration cards and the required documents; and the responsibilities and duties of fair price shop (FPS) owners.

A major problem was the quantity of kerosene being provided to BPL, APL and

Antyodaya families. Most shop owners supplied the fuel according to whim — some gave five litres, some six, some a maximum of seven litres. The kerosene was distributed only once a month. If you went on the 'wrong' day, you had to return empty-handed. That meant buying kerosene from the market, at Rs 30 a litre — a price most families could not afford.

Saeda Apa, a resident of Kalol who is well up on the RTI Act and its usefulness in stemming corruption and making governments accountable, filed an application before the district supply officer (DSO) in Godhra asking for details on the number of days a fair price shop must be kept open, the number of days kerosene should be made available to the people, depending on the card category, how many litres of kerosene should be made available, and at what price.

She got a response in 15 days: that her application was not in the 'prescribed format'. This so-called prescribed format

was attached to the letter. The DSO had obviously not read the Act in detail; the format provided is optional and definitely not binding.

Saeda Apa marched over to the DSO and sought an explanation. He promptly opened his drawer to show her the 'prescribed format'. "Madam, copies of this format were sent to all government departments. We have been instructed that all applications are to be received in this format alone." Saeda Apa was carrying her own copy of the rules. She placed it before him. "Sir," she said, "the rules clearly state that I am not bound to use the format." The DSO's confidence was replaced by embarrassment. He took her application and promised to give her the information she had asked for at the earliest. Just as Saeda Apa was about to step out of the office, he asked: "*Ben*, will you give me a copy of the rules that you carry?" Saeda Apa obliged.

As promised, the information came within

30 days. Saeda Apa was both pleased and surprised. She read that fair price shops had to stay open six days a week, through the month, between 8:30 am and 7:00 pm; kerosene must be made available on all days; families of three should get five litres of kerosene, and larger families a maximum of 10 litres irrespective of whether they are APL or BPL card holders. Clearly this was not happening anywhere.

The ration shop owners in Kalol were not pleased. Saeda Apa and her group made copies of the information they had got from the DSO, enlarged them, and pasted them in every available place — the panchayat office, outside each ration shop, near the nagar palika office, in the marketplace, and in every village and mohalla.

Change comes about slowly. Though the ration shop owners are not giving the stipulated 10 litres, all are providing a minimum of eight litres. The greatest relief to the people is that they are now open six days a week, and offer kerosene on all days.

Still, Saeda Apa and her group were not going to settle for less. They decided to collectively go for their rations. They would ask for the full 10 litres of kerosene, or nothing. Each carried a copy of the circular which they handed over to the shop owner along with their ration cards and the money. Each one said: “Give us 10 litres this time and every other time — we will take no less.”

The shop owner was forced to give in. Tears streaming down his face, he filled each container with 10 litres of kerosene. This was the first time in their lives that the people of Kalol had received their full quota of kerosene. They were delighted!

The law is an ass. It does not work until you kick it. Mere legislation does not bring about social change. What is important is awareness and access. That’s the kick. By an informed citizenry. — **Navaz Kotwal**

(Navaz Kotwal is Programme Coordinator, Commonwealth Human Rights Initiative [CHRI], New Delhi)

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RTI in practice

'The People's RTI Assessment 2008' concludes that more and more people are using the Act in new ways, disproving the theory that the RTI Act is an instrument handled only by select social activists.

The study suggests that from October 2005 to October 2008, nearly 500,000 RTI applications have been filed in rural areas across the country. The number in urban areas is perhaps double this; Delhi itself saw nearly 80,000 applications being filed in the past three years.

NCPRI and RAAG conducted separate rural and urban surveys. They also collected around 5,000 case studies from across the country, culled from the Hindi and English print media and downloaded from various websites and blogs.

In many cases, the applicants went beyond

securing answers to their questions. They fought injustices and corruption, and formed larger groups to support one another. Internet users set up their own online support groups and helped applicants fill in applications.

The report cites how people in rural Karnataka combined campaigns for the right to information and the right to food, to fight hunger. An 86-year-old dalit farmer in Maharashtra used RTI data to prevent his strawberry fields from drying up. In Uttar Pradesh, over 14,000 residents in a cluster of eight villages, 60 km from Banda, used RTI to fight for their right to have roads, bridges and electricity.

The surveys showed that an overwhelming majority of rural residents saw information as the key to solving village problems. Over

two-thirds of rural respondents said they had received a response to their applications, and nearly one-third said their problems had been solved though they had received no information or received only partial information.

Among urban respondents, nearly three-fourths said they had received responses though they were slow in coming. Only a third of respondents said they had received responses within the stipulated one month.

Karnataka is the best when it comes to implementation of the RTI Act; it is followed by Rajasthan. Uttar Pradesh fared the worst. Meghalaya has overall credibility as it was the quickest, most compliant and most polite.

But it is the central government that responded much more quickly and shared a lot more information than the state governments. Among the ministries, environment and railways stand out for the speediest responses. The police department

is the slowest to respond to applications and has also been responsible for the most number of rejections.

Though there are problems, activists feel the Act is a powerful regulation and has brought in significant changes in governance. In Maharashtra, ministers have become careful about their travel bills after former governor S M Krishna's travel details were exposed through an RTI application.

This particular disclosure revealed that the governor and his wife spent Rs 35,00,000 on 31 trips between Mumbai and Bangalore from December 2004 to November 2006. All the trips were paid for out of the government exchequer. Visits included those undertaken for weddings, funerals, dance performances, a tennis association meeting and a volleyball championship!

In yet another positive development, the Bihar government has introduced an 'RTI applications over the phone' facility for those who cannot write. Volunteers will

help illiterate people file applications on the phone. Says local journalist and RTI activist Manish Sisodia, who is part of this pilot project that aims to help villagers in five remote villages file 1,500 applications in a year: "It is much easier to convince poor villagers to fight for their rights than urban Indians, because they are so badly off that they have nothing to lose."

The popular slogan '*Hamara paise hamara hisaab*' (Our money, our accounts) is gaining popularity across India. Prominent RTI activist Arvind Kejriwal says: "RTI is helping people wrest back power from the authorities and find out how public money is being spent, using the Act to secure everything from good roads, sewers and classrooms to passports, ration cards and old age pensions. They have also exposed corruption in various public schemes, including disaster relief, public distribution systems, and privatised water supplies."

Rangpar, a tiny village of 750 people in Gujarat's Rajkot district, got a *pucca* road

thanks to visually challenged Ratna Ala, 26, who used the RTI Act. "For the last two years I have been using RTI to get information regarding how many schemes the panchayat implemented and how much money it spent on each work. Although I did not get accurate information, it helped them realise that their inefficiency would be exposed," Ala says.

Many applicants feel it is easy to apply for information. "Even a seven-year-old can file an RTI application," says Chirag Kapoor, a 20-year-old student activist who, along with fellow students, has filed 46 applications seeking the repair of Delhi's roads. A not-so-literate Ganapathy Krishnan of Chennai agrees: "I tried to get a ration card for two years with no success. Then I filed an RTI application, and got it within 45 days. That is the power of RTI."

Wajahat Habibullah says: "The RTI has worked particularly well for routine tasks such as getting passports and pensions, which previously took months or years."

RTI activists feel this trend is likely to continue for the foreseeable future at least, despite attempts by some state governments to dilute the law in practice.

The transition from an opaque system

Like many other laws in this country, the RTI Act too has some lacunae in its present form, most of it inherited from its colonial past.

It took India several decades to transition from an opaque system of governance, legitimised by the colonial Official Secrets Act (OSA), to one where citizens can demand the right to information.

However, the free flow of information remains severely restricted by three factors:

- The legislative framework which includes several pieces of restrictive legislation such as the Official Secrets Act, 1923.
- The pervasive culture of secrecy and arrogance within the bureaucracy.

- Low levels of literacy and rights awareness amongst the people of India.

RTI activists are aware that without high and broad standards for public disclosure, too much of government will remain locked in the embrace of vested, influential groups. On the other hand, as history has shown, once citizens know what is due to them, and are aware of a fair means to make this available, they will settle for nothing less. And that's the way it should be.

Despite the drawbacks the RTI Act is more citizen-friendly than any of the existing state laws, the chief reason being the promotion of transparency. The national law has a progressive clause on periodic proactive disclosure of various types of information which is far more elaborate and articulate than similar provisions in any existing state law. It prescribes, among other things, that public authorities will publish, from time to time, the budget allocated to each of their agencies, with particulars of all plans, proposed expenditure and reports on

disbursements made, manner of execution of subsidy programmes, including amounts allocated, details of beneficiaries and recipients of concessions, and permits or authorisations granted.

Teething troubles

One of the major problems is weak infrastructure and high pendency, according to the NCPRI and RAAG study. It was also found during the course of the study that almost half the PIOs interviewed in rural India said they were not aware that they were PIOs.

An overwhelming number of them cited lack of training and unfamiliarity with the law as key obstacles in their ability to effectively service RTI requests. "Over half said they had received no RTI training, and many complained of unavailability of guides or manuals to understand the law better. Over a third said they do not even have a copy of the RTI Act," the study says.

These findings explain why pendencies are

mounting at information commissions, increasing the wait for closure of cases. Since 2006, RTI activists have been trying to coax information commissioners to speed up disposal of second appeals and complaints; they have met with only vague justifications and insincere promises of better performance in future.

The NCPRI and RAAG study says: "The government responds, though sometimes slowly. Of the total applications filed, nearly two-thirds got a response from the public authorities. However, only a third of these applications were responded to within the stipulated 30 days."

Shailesh Gandhi fears delays in functioning will kill the Act. "This kind of under-performance is curious. Why are these commissioners taking things so lightly?" But, he adds: "The Act is like giving food in a famine-stricken area. People have not been empowered over the years. First you have to break the cynicism that nothing is possible. What holds people back is their apathy and cynicism. If they overcome that, this can be a

wonderfully empowering tool.”

Prime Minister Dr Manmohan Singh has expressed concern about the difficulties being faced by information-seekers under the RTI Act. At the third convention on RTI, organised by the central information commission, focusing on ‘RTI and Transparent Governance’, he admitted that in many places adequate attention had not been paid to training personnel and modernising record management systems.

The prime minister, while intervening in the debate on the Bill in Parliament, also said he expected state governments to take the initiative and start the process of appointing their own state information commissions (SICs).

He called on officials for more proactive and voluntary disclosure of information, whilst underlining that his government took pride in the RTI Act’s implementation. The bureaucracy has its own concerns: the present system of administering the RTI law

includes an odd fact — a government servant who is unlikely to be penalised for non-performance of his primary duty can be held to account for non-compliance under this law, and even fined out of his own pocket for this.

This has led to a situation where government officials sometimes give greater importance to RTI applications than to their primary duties, because they do not want to be pulled up or penalised for failing to look into an RTI application. If the number of RTI applications continues to rise, it will not be long before the system as we know it collapses and will have to be overhauled, argue bureaucrats.

Activists meanwhile complain that the undue emphasis on paperwork is proving self-defeating. The RTI law clearly stipulates that, wherever possible, information regarding government schemes, programmes, etc, should be distributed over the Internet so that citizens progressively do not have to ‘seek’

information; it is readily available to them even without an RTI application.

The Indian government is planning to introduce 100,000 common service centres (CSCs), which should be a huge step towards widespread Internet accessibility and will take us some distance towards implementing 'information for all'. Basically information kiosks where citizens can access official information with the help of trained personnel, CSCs will be spaces where the right to information, in its digital avatar, will be operative.

Wajahat Habibullah says the central commission is currently ensuring that all government records are computerised, which is mandatory under the Act. "RTI and e-governance need to go hand-in-hand. Then the CIC will not be overworked because people can simply access all the information they need through the Internet. Only then can we say that RTI has passed out of the hands of the government and into the hands of the people."

Backlog of cases

The central information commission's present headache is the huge backlog of cases, which seems to grow larger every day. "This is mainly due to the poor support system and infrastructure provided by the government to the information commission. For the commission to function effectively, it needs to have access to a large number of qualified advisors who can do a preliminary analysis of each appeal and complaint, thereby making the task of the commissioner easier," says the NCPRI and RAAG study.

As far as the functioning of the state information commissions is concerned, RTI activists from Maharashtra have some pertinent observations to make. The Maharashtra state information commission, where around 16,500 cases are waiting to be heard, invited RTI activists to attend hearings and suggest ways to improve performance.

A group of RTI activists attended 96

hearings between August 27 and September 10, 2008, and made records of the hearings they witnessed.

A summary of their findings:

The root cause of pendency is too little time being spent on hearing cases. Individual information commissioners hear cases for no more than two hours a day. There are other serious issues also, such as:

- Ambiguous orders.
- Lack of proper procedure for recording.
- Total lack of accountability as to when written orders will be given.
- No penalties imposed even on PIOs who deny information without justification.
- Arbitrary refusal of information for reasons not justified under the RTI Act.
- Information commissioners arguing on behalf of public authority, manufacturing justifications for denial of information when

PIOs are not present to represent their own cases.

For the moment, the team of observers has consciously chosen to stress one key issue—that information commissioners at the office in Mumbai (and presumably elsewhere too) are not hearing cases for a sufficient amount of time. Activist Anna Hazare even went to the extent of demanding a provision in the Act to dismiss information commissioners who do not dispose of at least 250 appeals in a month.

In their nationwide study, NCPRI and RAAG reported similar findings: “Our survey looked at over 300 departments across the country and at differing levels. The data that emerges suggests that in almost all these departments, a public information officer does not spend more than one or two hours a week (average of between 12 and 24 minutes per working day) on RTI-related work.”

RTI activists in Mumbai have urged activists and citizens in cities all across the country to

set up monitoring groups to observe their information commissioners and PIOs in relays, for a few weeks.

RTI for NRIs

Not just resident Indians, non-resident Indians (NRIs) too complain of obstacles in exercising their right to information. A release from the NGO, Association of India's Development (AID) states that three years after notification of the Right to Information (RTI) Act, the government still had not specified the procedure for remitting fees. In addition, it is extremely cumbersome for NRIs to file and receive acknowledgements for RTI applications filed with various central and state public authorities.

When PIOs were appointed to embassies, NRIs hoped they would follow the express provision in Section 6 (3) of the RTI Act, stating that if the subject matter of an application addressed to a public authority actually relates to another, then the former has to transfer it to the latter within five

days. Unfortunately that did not happen, AID notes.

In the US, the Indian embassy recently appointed PIOs and AAs (appellate authorities) after representation by AID volunteers. However, the embassy only accepted RTI applications that related to it; applications addressed to other public authorities in India were returned, the AID release states.

The embassy announced that NRIs could send their applications to it "only when the subject matter can reasonably be presumed to pertain to the embassy". Disclaiming its statutory obligation to transfer such queries, the embassy stated that it would not entertain applications where "the information required obviously does not pertain to the embassy".

As a result, NRIs are unable to participate in the transparency and accountability movement that promises to improve governance in India, the AID release adds.

RTI is development you can see

Boru is a small village in Kalol taluka, Gujarat. It is home to approximately 2,500 people belonging to Hindu, Muslim, adivasi and other communities. Like most other villages, Boru has its own problems. The roads are in bad shape, electricity is scarce, and healthcare non-existent. The road to the taluka headquarters at Kalol, around 5 km away, has long ago had the metalling washed away; perhaps it was never there at all. Built under the prime minister's village road construction scheme, only the first kilometre of the road is properly tarred, the rest resembles a dust bowl. That first kilometre seems to have been enough to please the inspectors who okayed the expenditure.

Health is another serious problem in Boru.

There is no primary health centre (PHC) in the village. Government policies allow one PHC for a population of every 30,000 people. It is usually placed in the largest village in the cluster. Boru's inhabitants can only avail of free medical services at the designated centre 8 km away, rather than in Kalol which is closer. If the road to Kalol is a dubious 'facility', the 8 km road to Jantral is a figment of someone's imagination. When ill, the villagers have little option but to pay Rs 15 to get to Jantral by public transport and be treated for minor ailments. There is absolutely no provision for more serious, sudden and life-threatening emergencies, and none for childbirth. Most deliveries are done at home by local midwives. If complications set in and professional help or a caesarean is needed, it is almost

impossible to quickly transport the woman to the PHC. Women have been known to deliver and die on the way to the healthcare centre, and it is not unusual to see four or five men carrying a woman in labour on foot all the way to the centre.

In these circumstances, the government-provided health worker becomes vital. She is supposed to visit the village three times a week, provide immunisation and supplements, and look after the needs of TB patients, children and pregnant women.

Boru is lucky if the health worker visits three times a month. When she does make an appearance, she sits in one place. If people approach her, well and good; if no one comes, she leaves in around an hour.

The villagers have been complaining about lack of medical facilities for the past four years. At the very least they want a sub-centre that will make childbirth less risky. Complaints to the PHC, to the MLA and several other authorities elicited the

standard response: “We will try our level best to do something and find a solution.” But after four years, the village is still waiting for that ‘best effort’. Nothing has changed. No sub-centre has been sanctioned and the people continue to suffer.

Then along came the Right to Information (RTI) Act. Gulambhai, a concerned citizen of Boru, decided he had had enough. It was time to ask a few questions and at least find out what the healthcare provisions for his village were. He applied to the local health centre doctor who doubles as its public information officer (PIO), asking specifically what assistance could be provided to patients and what facilities were available for pregnant women; the number of health workers assigned to Boru, how often they were required to visit, and what their responsibilities were.

Under the Right to Information Act, this information must be routinely provided by government departments to the public without specific requests being made.

Disclosure of names, designations and other particulars of PIOs who are responsible for processing applications for information, and details of their functions and duties along with the powers of all officers and employees associated with the Act is part of every department's statutory duties. But since the information was nowhere to be found, Gulambhai submitted his 'request in writing'.

Almost immediately — and certainly before any response was forthcoming — things on the ground began to change. The villagers were pleasantly surprised and pleased at the makeover of the health worker. She started visiting regularly (almost every day), provided basic healthcare, and made sure to visit every mohalla. The visits had an immediate impact on general health in the village. Meanwhile, a month went by with no response to Gulambhai's inquiry.

Pleased with the outcome of their small foray, many villagers didn't seem to care much that the information asked for was

still not forthcoming. Change had come about; their problems were being addressed and there seemed little point in wasting time or energy going into appeal against the PHC doctor and chasing up the information.

But Gulambhai and a few others were convinced that this was not the end of the story. They felt it was just as important to get the information. The sudden change in behaviour of the health worker could be temporary. To ensure its permanence it was necessary to make norms related to the provision of healthcare visible and widely known to all. So Gulambhai decided to change his strategy.

He sent the doctor a reminder asking about the status of his application. Three days later, the PHC doctor landed up on Gulambhai's doorstep (some villagers joked that he must have lost his way; a home visit by a government doctor was unheard of!). Aware of the honour being bestowed upon him, Gulambhai brought out the tea and biscuits.

The doctor asked where Gulambhai had learnt about the RTI Act, who had taught him to make an application, and how he was going to use the information. Gulambhai explained that a lot of people like him in the village had attended trainings and were well aware of the new law. He himself now devoted a large part of his time raising awareness about laws and rights and procedures among his fellow villagers. He had learnt that it was only when people knew their rights that there would be real change in society. All that said, he heaved a sigh of relief and sat back proudly.

The doctor was surprised. He assured Gulambhai that he would personally ensure that the health worker came regularly. He also suggested that Gulambhai or any other villager visit him at the PHC and draw his attention to any problems they had. But there was no mention of the information Gulambhai had asked for.

The visit from the doctor earned Gulambhai new respect and status in his village. Most of

all, it indicated the subtle shift in power that having information and using the law allows in the unequal relationships between bureaucracies and the people whom they are meant to serve.

A week after the doctor's visit, Gulambhai received the information by post. The villagers were thrilled. The replies were by no means as detailed as had been asked for, and it had taken almost twice as long to get them as is required by statute. Much of the information was what the health centre PIO was required to provide anyway, without request. Logical pursuit of the inquiry would have thrown up questions about events of the previous years: Where had the medicines to be distributed gone? What were the finances allocated to healthcare in the villages, and how had they been spent? Who was supervising the errant health worker? How was their performance assessed?

But for now these lines of inquiry were not going to be pursued. Nor was the system

going to change radically. The villagers believed that the provision of regular services and the personal visit by the doctor were in themselves a huge success that more than made up for any technical lapses in the provision of information.

This is what the right to information is. It is power, it is democracy in action. It is development you can see. It is participation you can hold in your hand. It is accountability that comes to your house. It is transparency you can witness in your village. — **Navaz Kotwal**

InfoChange News & Features, October 2007

The RTI campaign

Various Indian laws provided for the right to access information in specific contexts. Section 76 of the Indian Evidence Act, 1872 contains what has been termed a “Freedom of Information Act in embryonic form”. This provision requires public officials to provide copies of public documents to anyone who has a right to inspect them.

The Factories Act, 1948 provides for compulsory disclosure of information to factory workers “regarding dangers including health hazards and the measures to overcome such hazards” arising from their exposure to dangerous materials. While this is an excellent provision, in practice it is violated with impunity.

The Environment (Protection) Act, 1986 and the Environmental Impact Assessment Regulations provide for public consultation

and disclosure in various circumstances. For example, the Environmental Impact Assessment Regulations allow for a procedure for public hearings and publication of the executive summary of any proposal for any project affecting the environment by the person seeking to execute that project. Although this provision is meant to facilitate citizen input, it is in fact too limited, and environmental groups have had to go to court to get more complete disclosure.

Regardless of these provisions, the system of governance in India has traditionally been opaque, with the State retaining the colonial Official Secrets Act (OSA) and continuing to operate in secrecy at the administrative level. The OSA, enacted in 1923, still retains its original form, apart from some minor amendments

made in 1967.

The Central Civil Service Conduct Rules, 1964 bolster the provisions of the OSA by prohibiting government servants from communicating any official document to anyone without authorisation. Section 123 of the Indian Evidence Act, 1872 also prohibits the giving of evidence from unpublished official records without the permission of the head of the relevant department, who is free to grant or withhold such permission as he/she sees fit.

The poor flow of information is compounded by two factors — low levels of literacy and the absence of effective communication tools and processes. In many regions, the standard of record-keeping is extremely poor. Most government offices have stacks of dusty files everywhere, providing a ready excuse for refusing access to records, on the specious claim that they have been ‘misplaced’. The rapid growth of information technology, on the other hand, has meant that states in the

country are now trying to promote technology, primarily to attract investment. This is indirectly contributing to an improved flow of information.

Objections to the Official Secrets Act have been raised since 1948, when the Press Laws Enquiry Committee recommended certain amendments. In 1977, the government formed a working group to look into the possibilities of amending the OSA. Unfortunately, the working group did not recommend changes, as it felt the Act related to the protection of national safety and did not prevent the release of information in the public interest, despite overwhelming evidence to the contrary. In 1989, a committee was set up which recommended limiting the areas where government information could be hidden, and opening up all other spheres of information. However, no legislation followed from these recommendations.

In the last decade or so, citizens groups have started demanding the outright repeal of

the Official Secrets Act and its replacement by legislation making the duty to disclose the norm, and secrecy the exception.

It's taken India 77 years to transition from the repressive climate of the OSA to one where citizens can demand the right to information. The enactment of the Freedom of Information Act, 2002 marks a significant shift for Indian democracy, for the greater the access to information by citizens, the greater the responsiveness of government to community needs.

Interestingly, in India, the movement for the right to information has been as vibrant in the hearts of marginalised people as it is in the pages of academic journals and in the media. This is not surprising since food security, shelter, the environment, employment and other survival needs are inextricably linked to the right to information.

In the early-1990s, in the course of the struggle of the rural poor in Rajasthan, the

Mazdoor Kisan Shakti Sangathan (MKSS) hit upon a novel way to demonstrate the importance of information in an individual's life — through public hearings, or *jan sunwais*. The MKSS's campaign demanded transparency of official records, a social audit of government spending, and a redressal machinery for people who had not been given their due. The campaign caught the imagination of a large cross-section of people, including activists, civil servants and lawyers.

The National Campaign for People's Right to Information (NCPRI), formed in the late-1990s, became a broad-based platform for action. As the campaign gathered momentum, it became clear that the right to information had to be legally enforceable. As a result of this struggle, not only did Rajasthan pass a law on the right to information, but in a number of panchayats, graft was exposed and officials punished.

The Press Council of India drew up the first

major draft legislation on the right to information in 1996. The draft affirmed the right of every citizen to information from any public body. Significantly, the term 'public body' included not only the State but also all privately-owned undertakings, non-statutory authorities, companies, and other bodies whose activities affect the public interest. Information that cannot be denied to Parliament or state legislatures cannot be denied to a citizen either. The draft also provided for penalty clauses for defaulting authorities.

Next came the Consumer Education Research Council (CERC) draft — by far the most detailed proposed freedom of information legislation in India. In line with international standards, it gave the right to information to anyone, except "alien enemies", whether or not they were citizens. It required public agencies at the federal and state levels to maintain their records in good order, to provide a directory of all records under their control, to promote the computerisation of records in

interconnected networks, to publish all laws, regulations, guidelines, circulars related to or issued by government departments, and any information concerning welfare schemes. The draft provided for the outright repeal of OSA. This draft didn't make it through Parliament either.

Finally, in 1997, a conference of chief ministers resolved that the central and state governments would work together on transparency and the right to information. Following this, the Centre agreed to take immediate steps, in consultation with the states, to introduce freedom of information legislation, along with amendments to the Official Secrets Act and the Indian Evidence Act, before the end of 1997. Central and state governments also agreed to a number of other measures to promote openness, including establishing accessible computerised information centres to provide information to the public on essential services, and speeding up ongoing efforts to computerise government operations.

Important state initiatives

Inspired and encouraged by the exercises taken up by the central government, many state governments yielded under popular pressure and prepared draft legislations on the right to information. A number of states introduced their own transparency legislations before the Freedom of Information Bill was finally introduced in the Lok Sabha on July 25, 2000.

Goa: One of the earliest and most progressive legislations, it had the fewest categories of exceptions, provision for urgent processing of requests pertaining to life and liberty, and a penalty clause. It also applied to private bodies executing government works. One weakness was that it had no provision for proactive disclosure by government.

Tamil Nadu: The legislation stipulated that authorities must part with information within 30 days of it being sought. Following this legislation, all public distribution system

(PDS) shops in the state were asked to display details of stocks available. All government departments also brought out citizens charters listing information on what the public was entitled to know and get.

Karnataka: The right to information legislation contained standard exception clauses covering 12 categories of information. It had limited provisions for proactive disclosure, contained a penalty clause, and provided for an appeal to an independent tribunal.

Delhi: This law was along the lines of the Goa Act, containing standard exceptions and providing for an appeal to an independent body, as well as the establishment of an advisory body, the State Council for Right to Information. Residents of the capital were free to seek any type of information — with some exceptions — from the civic body, after paying a nominal fee. It was also clearly stated that if the information was found to be incorrect, or had been deliberately tampered with, the

official could face a penalty of Rs 1,000 per application.

Rajasthan: After five years of dithering, the Right to Information Act was passed in 2000. The movement was initiated at the grassroots level. Village-based public hearings, *jan sunwais*, organised by the Mazdoor Kisan Shakti Sangathan (MKSS), gave space and opportunity to the rural poor to articulate their priorities and suggest changes. The four formal demands that emerged from these *jan sunwais* were: 1) Transparency of panchayat functioning; 2) accountability of officials; 3) social audit; and 4) redressal of grievances. The Bill, when it was eventually passed, however, placed at least 19 restrictions on the right of access to information. Besides having weak penalty provisions, it gave too much discretionary power to bureaucrats. Despite this, the right to information movement thrived at the grassroots level in Rajasthan, following systematic campaigns waged by concerned groups and growing awareness about the people's role in participatory

governance. It was the *jan sunwais* that exposed the corruption in several panchayats and also campaigned extensively for the right to food after the revelation of hunger and starvation-related deaths in drought-ravaged districts.

Maharashtra: The Maharashtra assembly passed the Maharashtra Right to Information (RTI) Bill in 2002, following sustained pressure from social activist and anti-corruption crusader Anna Hazare. The Maharashtra legislation was the most progressive of its kind. The Act brought not only government and semi-government bodies within its purview but also state public sector units, cooperatives, registered societies (including educational institutions) and public trusts. Public information officers who failed to perform their duties could be fined up to Rs 250 for each day's delay in furnishing the information. Where an information officer had wilfully provided incorrect and misleading information, or information that was incomplete, the appellate authority hearing the matter

could impose a fine of up to Rs 2,000. The information officer concerned could also be subject to internal disciplinary action. The Act even provided for the setting up of a council to monitor the workings of the Act. The council comprised senior members of government, members of the press, and representatives of NGOs. They were expected to review the functioning of the Act at least once every six months.

'Ooof, woh RTI-walleh aa gaye'

"Ooof, woh RTI-walleh aa gaye." ("Oh no, those RTI-wallehs are here.") A new sobriquet (RTI-walleh) has been coined in Ranchi ever since a team of zealous students and professors from the Prabhat Khabar Institute have begun stalking the corridors of babudom. Armed with the necessary information procured under the Right to Information (RTI) Act, they have rattled not just the government and administrative machinery but have also stirred up a hornet's nest in the legislature. Questions have been raised about the distribution of gifts during sessions, the surprisingly small amounts of money deposited in the treasury for use of the assembly guesthouse, and illegal promotions of officials employed in the assembly.

The Prabhat Khabar Institute for Media

Studies, begun by the newspaper *Prabhat Khabar*, is affiliated to the Bharatiya Vidya Bhawan, Mumbai, and offers a one-year diploma course in journalism. Its director Vishnu Rajgadga has been spearheading the Jharkhand RTI Forum along with Mritunjay Sharma, also from the Institute and Shakti Pandey, a journalist attached to *Prabhat Khabar*. Together they have motivated and guided students into using RTI in various innovative and exploratory exercises. The students have filed a slew of applications in an effort to pursue investigative journalism and even uncover scams.

The decision to create the Jharkhand RTI Forum was taken on July 11, 2006, after a seminar revealed that the government was disinclined towards providing the necessary infrastructure and manpower for the

mandatory duty of disseminating information. Experiences revealed that officials did not, or were slow in replying to applications. Many government offices had not yet appointed public information officers (PIOs) or assistant public information officers (APIOs). It was also found that disclosure under Section 4 (1) B, which makes it mandatory for the public authorities to disseminate information on the workings and staffing of various departments, was not being carried out.

In many instances, officials sought to mislead the public, especially poorer sections, by saying that the information they sought would be expensive. There were also complaints of officials harassing the public and not cooperating. And so it was decided that the Forum would disseminate information to the public through newspapers, booklets and pamphlets, and also provide assistance through an RTI telephone helpline.

Says Vishnu Rajgadga: “RTI can be a very

effective weapon for the media and the public. So it is imperative that one learns how to use it effectively. Hitherto, the bureaucracy could dodge by claiming certain matters were confidential or secret, but with the right knowledge and application of this Act one can now demand transparency and accountability. This is why we have decided to train media students in how to use RTI.”

Six months after the Forum launched ‘Action Research on RTI in Jharkhand’ there have been some noteworthy cases of the use of RTI. Here are some of them:

- In one of the first exercises, Mritunjay Sharma filed two applications with the department of personnel and administrative reforms (the nodal agency for implementation of RTI) and discovered the extremely casual approach it had taken on some basic inquiries. This was an eye-opener to the state’s approach to RTI. A concerted campaign over six months, however, soon began bearing results. On

the day I visited the Institute, a newspaper carried a state government announcement on Section 4 (1) B, disseminating information on the workings of various departments.

- Vishnu Rajgadia used RTI to uncover a story on how IDBI, Patna, had sanctioned over Rs 2 crore for factories in Ranchi that were never completed, and how the land was lying unused. When Rajgadia sought information from IDBI he was denied it on grounds of 8 (d), with IDBI claiming it was under no obligation to provide information relating to commercial confidence. After a second appeal to the central information commission (CIC), Rajgadia succeeded in getting most of the relevant information out of IDBI. He intends to pursue the matter for an audit report and other documents.

- In another instance of using RTI for investigative reporting, Rajgadia and Mritunjay Sharma fought a protracted battle to get to the bottom of a case in which the president of the Jharkhand Hindu

Religious Trust Board had managed to illegally convert property worth millions into private property. The law department stalled their efforts to get the relevant papers, but after successfully appealing to the state information commission (SIC) they were able to get the file. Another RTI application forced the law department to act, whereby the move by the chairman of the Hindu Religious Trust Board was declared illegal.

- Shiveshwar Hazam, a student of the Institute, has filed a number of applications with the block development office in Tamar to pursue his interest in rural instances of bad governance. Through one application he learnt that around Rs 58 lakh had been given in crop insurance, but that officials had not carried out any inspections, although it was mandatory.

- Nilmani Kumar, another student, followed up on an earlier case study initiated by Shakti Pandey. Pandey had raised questions about various gifts distributed during the assembly sessions. The PIO refused to

divulge the right information and, later, when summoned before the CIC he did not show up. Instead, he sent his advocate. Pandey pointed out that the appeal rules do not allow an advocate to represent the PIO. He succeeded in getting the information that gifts worth Rs 21 lakh had been distributed by various departments over two years. What's more, Nilmani Kumar pressed the assembly secretariat for details on who had paid for the advocate's expenses; he received the startling reply that the advocate had not been paid a single paisa!

- Student Uday Kumar Yadav asked the cabinet secretariat and coordination department for details on all trips made outside the state by various chief ministers of Jharkhand since the state's formation. He has also asked about the nature of the trips, expenditure incurred, names of those who accompanied the chief minister, and the expenses incurred on them. At the time of writing this article he was still awaiting a reply.

- Premi Bhuniya, a student, sought

information from the Sadar hospital on what provisions there were at the hospital for poor patients. Also, the attendance records of doctors there. She found that doctors visited the hospital only two days a week.

- Vinita Sharma filed an application with the nagar nigam and found that although Rs 3 crore had been allocated towards developing Burra Talao, there were no signs of any work having been carried out.

The students file RTI applications according to their particular line of interest, be it civic matters, issues of rural employment, child rights, prison conditions, or even simple cases of redressal like helping a small transporter get his dues of Rs 8 lakh from the department of education, or getting someone a BSNL telephone connection that has been pending for six months.

— Freny Manecksha

(Freny Manecksha is a Mumbai-based journalist)

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International standards

The United Nations: Very early on, freedom of information was recognised as a fundamental right within the United Nations. In 1946, at its first session, the UN General Assembly adopted Resolution 59 (1) which states: 'Freedom of information is a fundamental human right and... the touchstone of all the freedoms to which the UN is consecrated.'

In ensuing international human rights instruments, freedom of information was set out as part of the fundamental right of freedom of expression, which included the right to seek, receive and impart information. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) which guarantees freedom of opinion and expression: '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.' The International Covenant on Civil and Political Rights (ICCPR) was adopted by the General Assembly in 1966. This guaranteed: a) Everyone shall have the right to freedom of opinion; b) everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice; and c) the exercise of the rights... carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary.

In 1993, the UN Commission on Human

Rights established the office of the UN Special Rapporteur on Freedom of Opinion and Expression. Part of the special rapporteur's mandate is to clarify the precise content of the right to freedom of opinion and expression.

The Commonwealth: In 1980, the Commonwealth Law Ministers meeting in Barbados stated that 'public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information'. More recently, the Commonwealth has taken a number of significant steps to elaborate on the content of that right. In March 1999, the Commonwealth Expert Group Meeting in London adopted a document setting out a number of guidelines on the right to know and freedom of information as a human right, including the following: Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the

judicial arms of the State, as well as any government-owned corporation and any other body carrying out public functions. These principles and guidelines were endorsed later at the Commonwealth Heads of Government Meeting, in November 1999.

1992 Rio Declaration on Environment and Development: Principle 10 of the 1992 Rio Declaration on Environment and Development first recognised the fact that access to information on the environment, including information held by public authorities, is the key to sustainable development and effective public participation in environmental governance. Agenda 21, the 'Blueprint for Sustainable Development', the companion implementation document to the Rio Declaration, states: 'Individuals, groups and organisations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a

significant impact on the environment, and information protection measures.’

At the national level, several countries have laws which codify, at least in part, Article 10 of the Rio Declaration. In Colombia, for example, Law 99, of 1993, on public participation in environmental matters, includes provisions on the right to request information. Likewise, in the Czech Republic, there is a constitutional right to obtain information about the state of the environment; this has been implemented in a number of environmental protection laws.

In 1998, as a follow-up to the Rio Declaration and Agenda 21, member states of the United Nations Economic Commission for Europe (UNECE) and the European Union signed the legally binding Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). The Aarhus Convention recognises access to information as part of the right to live in a

healthy environment, rather than as a free-standing right. However, it does impose a number of obligations on States which are consistent with international standards — for example, it requires States to adopt broad definitions of ‘environmental information’ and ‘public authority’, exceptions must be subject to a public interest test, and an independent body with the power to review refusals of requests for information must be established.

Global trends

Although freedom of information laws have existed since 1766, when Sweden passed its Freedom of the Press Act, the last decade or so has seen an unprecedented number of States striving to become more transparent and legislating on access to information. Around 86 countries and autonomous jurisdictions have now enacted some form of a freedom of information law guaranteeing the right of access to government-held information, according to a recent survey compiled by Dutch journalist

Roger Vleugels for International Right to Know Day.

According to transparency scholar Alasdair Roberts, the reach of freedom of information laws has now expanded to cover not just millions of people, as in the traditional countries, beginning with Scandinavia, but billions of people, with the passage of the RTI Act in India and new information regulations developed by the People's Republic of China.

In Western Europe, only Germany and Switzerland lack legislation. Nearly all Central and Eastern European countries have adopted laws as part of their democratic transition. Almost a dozen Asian countries have either enacted laws or are in the process of doing so. Similarly, in South and Central America, several countries are considering laws. Many countries in southern and central Africa are following South Africa's lead, with varying proposals for formulating freedom of information laws.

Sweden's Freedom of the Press Act required the disclosure of official documents upon request. The Freedom of the Press Act, now part of the Swedish Constitution, provides among other things that 'every Swedish subject shall have free access to official documents'. While chapter 2 sets out exceptions to free access, it also, in most cases, provides for a right to appeal refusals to grant access, to the courts. Another country with a long history of freedom of information legislation is Colombia, whose 1888 Code of Political and Municipal Organisation allows individuals to request documents held by government agencies or in government archives. The USA passed a freedom of information law in 1967; this was followed by legislation in Australia, Canada and New Zealand, all in 1982.

In Asia, the Philippines recognised the right to access information held by the State relatively early, passing a Code of Conduct and Ethical Standards for Public Officials and Employees, in 1987. A Code on Access to Information was adopted in Hong Kong

in March 1995, and in Thailand, the Official Information Act came into effect in December 1997. In South Korea, the Act on Disclosure of Information by Public Agencies came into effect in 1998, and in Japan, the Law Concerning Access to Information Held by Administrative Organs was enacted in April 2001.

South Africa remains the only African country to have actually passed freedom of information legislation. Indeed, the 1996 Constitution of the Republic of South Africa is unique not only in the breadth of its guarantee of freedom of information, but also in that it requires the adoption of national legislation to give effect to this right, within three years of its coming into force. The enabling legislation, the Promotion of Access to Information Act, came into effect in March 2001. Uganda and Angola have also passed information laws but these have not yet come into force. The Zimbabwean Access to Information and Protection of Privacy Act is not considered a proper freedom of information law because

of the numerous restrictions on the exercise of the right to information and its draconian provisions aimed at controlling the exercise of journalism in the country.

Closer home, on October 21, 2008, the caretaker government of Bangladesh issued the Right to Information Ordinance, in the country's gazette, based loosely on the Indian Act. The Nepal government enacted the Right to Information Act 2007, in 2007, making provision for an independent national information commission for protection and promotion of the right to information.

What has spurred this flurry of interest in transparent governance? Since the 1980s, the collapse of authoritarianism and the emergence of new democracies have given rise to constitutions that include specific guarantees on the right to information. At the same time, older democracies like the United Kingdom are seeing the wisdom of enacting such legislation. International bodies like the Commonwealth, Council of

Europe, and the Organisation of American States have drafted guidelines or model legislation to promote freedom of information. The World Bank, International Monetary Fund and other donors are also pressing countries to adopt access to information laws as part of an effort to increase transparency and reduce corruption. Finally, there is agitation from the media and civil society groups for greater access to government-held information and for more participation in governance.

9/11 has however led some countries to limit information access. The restrictions have been most profound in the United States and Canada where proposals to limit national and local freedom of information Acts have been adopted. Such high-level opposition to information access may have reduced longstanding rights in some countries, but transparency laws are now common across the world. It is expected that many new countries will adopt such laws thanks to international agreements

such as the UN Convention Against Corruption and international and domestic demand for better accountability and public participation.

There is much work still to be done, with some countries still grappling with the concept of developing a culture of openness. Weak laws, poor implementation and oversight hamper many countries' efforts, leaving access largely unfulfilled. Record-keeping is often poor in new countries, and there are ongoing problems with State secrets and the misuse of privacy exemptions.

RTI primer

When did the Right to Information (RTI) Act come into force?

October 12, 2005.

Where all does it apply?

The Act extends to the whole of India, except the state of Jammu and Kashmir.

What does right to information mean?

The right to inspect works, documents, records, take notes, extracts or certified copies of documents or records, take certified samples of material, obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode.

What is the procedure for requesting information?

An application in writing, or using electronic means, in English or Hindi or in the official language of the area, to the designated public information officer (PIO), specifying particulars of the information sought. The reason for seeking the information need not be specified.

What is the fee?

No fees are charged from people living below the poverty line. Application fees must be reasonable, and, if further fees are required the applicant must be intimated in writing with details of how the figure has been arrived at. Applicants can seek a review of the decision on fees charged by the PIO by applying to the appropriate appellate authority. The applicant must be provided information free of cost if the PIO fails to comply within the prescribed timeframe.

What is the time limit for information to be provided?

Thirty days from the date of the application; 48 hours for information concerning the life and liberty of a person. Five days shall be added to the above response time in case the application for information is given to the assistant public information officer. If the interests of a third party are involved, then the time limit shall be 40 days (the maximum period, plus time given to the party to make a representation). Failure to provide information within the specified period is deemed a refusal.

What could be the grounds for a rejection?

If the information is covered by exemptions from disclosure or if it infringes on the copyright of a person other than the State.

What areas are exempt from disclosure?

Information or disclosure that would

prejudicially affect the sovereignty and integrity of India; the security, strategic, scientific or economic interests of the State; relations with foreign States; information that could lead to incitement of an offence; information that has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court; information, the disclosure of which would cause a breach of privilege of Parliament or the state legislature; information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information; information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information; information received in confidence from a foreign government; information, the disclosure of which would endanger the life or physical safety of any

person or identify the source of information or assistance given in confidence for law enforcement or security purposes; information that would impede the process of investigation or apprehension or prosecution of offenders; Cabinet papers, including records of deliberations of the council of ministers, secretaries and other officers; information that relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of an individual.

Notwithstanding any of the exemptions listed above, a public authority may allow access to information if public interest in disclosure outweighs the harm to protected interests.

Is partial disclosure allowed?

Only that part of the record which does not contain any information that is exempt from disclosure and which can reasonably be severed from any part that contains exempt information may be provided.

What does 'public authority' mean?

It means any authority or body or institution of self-government established or constituted by or under the Constitution, by any other law made by Parliament, by any other law made by the state legislature, by notification issued or order made by the appropriate government including any body owned, controlled or substantially financed by a non-government organisation substantially financed directly or indirectly by the appropriate government.

Who are public information officers (PIOs)?

PIOs are officers designated by the public authorities in all administrative units or offices under it to provide information to citizens requesting information under the Act. Any officer, whose assistance has been sought by the PIO for proper discharge of his or her duties, shall render all assistance and, for the purpose of contraventions of the provisions of this Act, the other officer shall be treated as a PIO.

Who are 'third parties'?

A third party is a person other than the citizen making a request for information, and includes a public authority. Third parties have a right to be heard in respect of applications and appeals dealing with information submitted by them to the government in confidence.

Who is excluded?

Central intelligence and security agencies specified in the second schedule, like IB, R&AW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, the Crime Branch-CID-CB, Dadra and Nagar Haveli, and Special Branch, Lakshadweep police. Agencies specified by state governments through a notification will also be excluded. The exclusion, however, is not

absolute and these organisations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Information relating to allegations of human rights violations can be given but only with the approval of the central or state information commission, as the case may be.

What are appellate authorities?

First appeal: First appeal to an officer senior in rank to the PIO in the concerned public authority within 30 days from the expiry of the prescribed time limit or from receipt of the decision (delays may be condoned by the appellate authority if sufficient cause is shown).

Second appeal: Second appeal to the central information commission or the state information commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the first appellate authority (delays may be condoned by the commission if

sufficient cause is shown).

Third party appeal against the PIO's decision must be filed within 30 days before the first appellate authority, and within 90 days of the decision on the first appeal, before the appropriate information commission which is the second appellate authority.

The burden of proving that denial of information was justified lies with the PIO. First appeal shall be disposed of within 30 days from the date of its receipt. The period is extendable by 15 days, if necessary.

What are the penalty provisions?

Every PIO will be liable for a fine of Rs 250 per day, up to a maximum of Rs 25,000, for not accepting an application, delaying the release of information without reasonable cause, malafidely denying information, knowingly giving incomplete, incorrect, misleading information, destroying information that has been requested, and obstructing the furnishing of information in any manner. The information commission

(IC) at the central and state levels will have the power to impose this penalty. The information commission can also recommend disciplinary action for violations of the law against an erring PIO.

What is the jurisdiction of the courts?

Lower courts are barred from entertaining suits or applications against any order made under this Act. However, the writ jurisdiction of the Supreme Court and high courts, under Articles 32 and 225 of the Constitution, remains unaffected.

Source: <http://righttoinformation.gov.in/> is the Indian government's central platform for information about public information officers (PIOs) and proactive disclosures of various public authorities (PAs). It also provides access to RTI-related information/disclosures published on the Net by various PAs under the Government of India as well as state governments

Links to state information commissions

Andhra Pradesh: <http://www.apic.gov.in/>
Assam: <http://www.sicassam.in/>
Bihar: <http://bsic.co.in/>
Chhattisgarh: <http://cg.nic.in/rti/>
Goa: <http://egov.goa.nic.in/rtipublic/sic.aspx>
Gujarat: <http://gic.guj.nic.in>
Haryana: <http://cicharyana.gov.in>
Himachal Pradesh: <http://admis.hp.nic.in/sic>
Jharkhand: <http://210.212.20.92/jsic>
Karnataka: <http://www.kic.gov.in>
Kerala: <http://keralasic.gov.in>
Madhya Pradesh: <http://www.mpsic.nic.in>
Maharashtra: <http://sic.maharashtra.gov.in>
Mizoram: <http://msic.mizoram.gov.in>
Nagaland: <http://nlsic.gov.in>
Orissa: <http://orissasoochanacommission.nic.in>
Punjab: <http://www.infocommpunjab.com>
Rajasthan: <http://ric.rajasthan.gov.in>
Sikkim: <http://www.cicsikkim.gov.in>
Tamil Nadu: <http://www.tnsic.gov.in>

Tripura: <http://rtitripura.nic.in>
Uttarakhand: <http://uic.gov.in/>
Uttar Pradesh: <http://upsic.up.nic.in/>
West Bengal: <http://wbic.gov.in/>

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