

e DISSEMINATOR

*A fundamental human right that
makes life easier and honorable for common people*

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Brothers and Sisters,

Four years ago I said to you that an important challenge we face is the challenge of providing good governance. We have taken several steps to make Government transparent, efficient and responsive. The Right to Information Act was one major step. We have initiated reform and modernization of Government. The National e-Governance Plan will make it easier for all our citizens to deal with the various agencies of Government.

-- The Prime Minister, Dr. Manmohan Singh, addressing the Nation from the ramparts of the Red Fort on the 62nd Independence Day.



[Photo courtesy :< <http://pmindia.nic.in/photogallery.htm>>]

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DECISION MAKER

Interpret the transparency law liberally!

Many recent judgments favored liberal interpretation of RTI laws and boosted the morale of the transparency lovers. The following statements will be inscribed with golden letters in the history of openness:

“Through every pore of its 31 sections, the Act [the RTI Act] celebrates the spirit of knowledge.”

-- Hon'ble Justice Sanjib Banerjee, Calcutta High Court, in *Pritam Roop v The University of Calcutta & Others* [W.P. No. 22176 (W) of 2007, Judgment date: 28 March 2008], objecting to the ‘floodgate theory’ of the CIC, decided that a student should have access to his evaluated answer script in University exams under the RTI Act.

“A rights based enactment is akin to a welfare measure, like the Act [the RTI Act], should receive a liberal interpretation. ...Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.”

-- Hon'ble Justice S. Ravindra Bhat, Delhi High Court, in *Bhagat Singh v. Chief Information Commissioner and Ors.*, WP(C) No. 3114/2007, Judgment date: 3 Dec.2007]

“[T]he statute [FOI Act], whose whole purpose is to secure the release of information, should be construed in as liberal a manner as possible and, so long as individual and other private rights are respected, and the cost limits are not exceeded, I do not see myself any reason why the Commissioner should not be accorded the widest discretion in deciding the form and type of information which should be released in furtherance of its objectives”.

-- Lord Marnoch (Scotland), in *Common Services Agency v Scottish Information Commissioner* [2006] CSIH 58, 1 December 2006, the first Court of Session case on the FOI (Scotland) Act; during his long career only ever had one civil decision and one criminal decision overturned.

“There is much force in Lord Marnoch’s observation in the Inner House that, as the whole purpose of FOISA is the release of information, it should be construed in as liberal a manner as possible”.

-- Opinion of UK House of Lords in *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47 (9 July 2008)

Who's afraid of RTI?

A few organizations are feeling that Right to Information is a burden on them and try to persuade the Central Information Commission (CIC) that they need not honor people's Right to Information. On 6 August 2008, two institutions (IBA and BCSBI) were successful in doing so, while another body (UTI AMC) failed.

Surprisingly, UTI AMC argued before the CIC that, "Since UTIAMC is subject to the control of SEBI, any citizen can seek information regarding UTIAMC through SEBI as it[SEBI] is entitled to seek any information from UTIAMC." UTI AMC is ready to provide information, but one should send one's request to SEBI, not to UTI AMC itself!

What a roundabout way of doing things!

All the Decisions were pronounced by Central Information Commissioner Smt. Padma Balasubramanian. Excerpts from the Decisions:

- UTI Asset Management Company Pvt. Ltd.

"UTIAMC has been sponsored by SBI, PNB, LIC and Bank of Baroda. Being the sponsors, they are the only 4 shareholders, holding 25% shares each. In other words, UTIAMC is owned by four public authorities. Therefore, a short question that arises for consideration is whether an institution/company wholly owned by a public authority/authorities could be considered to be a public authority in terms of the RTI Act. In terms of Section 2(h) of the RTI Act, any body owned, controlled or substantially financed directly or indirectly by the appropriate government would be a public authority. Even though there is no specific provision in the RTI Act that a body owned, controlled or substantially funded by another public authority is also a public authority, yet, from the purpose and object of the RTI Act, it is crystal clear that there should be transparency in the functioning of any institution in which public money is deployed. The four sponsors are public authorities and when they in turn own another entity, such an entity has to be treated as a public authority. ...One important fact which goes against the claim of UTIAMC is that its accounts are audited by the C&AG in terms of Section 619B of the Companies Act. In terms of this Section, a company in which one or more corporations owned or controlled by the Government-State or Central- holds more than 51% shares, then it shall be deemed to be a government company for the purposes of audit by the C&AG. In the present case, all the four shareholders are government companies and they in turn hold more than 51% shares in UTIAMC. Since in the present case, the entire share

capital of UTIAMC is held by 4 public authorities, I have no hesitation to hold that UTIAMC is a public authority.

In view of this decision, I direct UTIAMC to designate PIOs and AAs and also comply with the provisions of Section 4 of the Act. These directions should be complied with, within a period of one month”.¹

- Indian Banks Association

“...IBA is a voluntary association of Banks. Its membership comprises of 150 member banks- public and private sector banks, foreign banks, financial institutions and cooperative banks. Only 28 out of 150 members, are public sector banks.. The entire expenses of IBA are found to be proportionally borne by the members. Even the members of the Management Committee are found to be elected representatives of the Member banks. It is also seen that on the basis of the authority given by the member banks, IBA negotiates with employee organization on behalf of the banks. Thus, I find that the Association is neither substantially funded by the government nor it is under the control of the government. Therefore, I find that IBA does not fall within the definition of a public authority as defined in Section 2(h) of the RTI Act and accordingly I hold that IBA is not a public authority”.²

- The Banking Codes & Standards Board of India (BCSBI)

“Taking into consideration the object and purpose of the RTI Act, I have taken the view that any institution substantially financed, owned or controlled by any public authority would have to be treated as a public authority notwithstanding the fact the there is no direct or indirect funding by an appropriate government. Therefore, I have to only examine whether RBI, being a public authority is substantially funding BCSBI. Even though for the first five years, RBI were to fund BCSBI, I find that its funding to be only less than 50% of the total funding of BCSBI for the last two years and that there is no managerial control by RBI over BCSBI. In view of this, I hold that BCSBI is not a public authority in terms of the RTI Act”.³

¹ Appeal No.2624/ICPB/2008, August 6, 2008

² Appeal No.2622/ICPB/2008, August 6, 2008

³ Appeal No.2623/ICPB/2008, August 6, 2008

LAW

The Second Schedule, as Amended

First amendment to the Second Schedule of the Right to Information Act

The Second Schedule of the Right to Information (RTI) Act was first amended *vide* Notification General Statutory Rules(G.S.R.)347 dated 28 September 2005 issued by Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training),published in the Gazette of India on 8 October 2005.

First amendment to the Second Schedule of the RTI Act substituted Sashastra Seema Bal (corresponding serial number in the Second Schedule -15) for Special Services Bureau (Sashastra Seema Bal was earlier called Special Services Bureau when it was formed in 1963 after the Sino-Indian war) and added the following four organizations (with corresponding serial numbers in the Second Schedule prior to the second amendment) :

19. Special Protection Group.
20. Defence Research and Development Organisation.
21. Border Road Development Board.
22. Financial Intelligence Unit, India.

Second amendment to the Second Schedule of the RTI Act

The Second Schedule of the RTI Act was further amended *vide* No.G.S.R.235(E) dated 27 March 2008 issued by the Ministry Of Personnel, Public Grievances And Pensions (Department Of Personnel and Training) ,published in the Gazette of India on 28 March 2008.

A copy of the Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training) Notification G.S.R. 235 (E) dated the 28th March, 2008, publishing amendments to the Second Schedule to the Right to Information Act, 2005, under sub-section (3) of section 24 (B) of the Right to Information Act, 2005 was tabled in the Rajya Sabha on 30th April, 2008.¹

Second amendment to the Second Schedule omitted following three organizations (with corresponding serial numbers in the Second Schedule prior to the second amendment):

16. Special Branch (CID), Andaman and Nicobar.
17. The Crime Branch-C.I.D.- CB, Dadra and Nagar Haveli.

¹ See Brief Record of the Proceedings of the Meeting of the Rajya Sabha held on the 30th April, 2008, *RAJYA SABHA Parliamentary Bulletin PART - I (Two hundred and thirteenth Session)*

18. Special Branch, Lakshadweep Police.

And added following two organizations (with corresponding serial numbers in the Second Schedule after the second amendment):

16. Directorate General of Income-tax (Investigation)

17. National Technical Research Organisation

Sub-section (1) of section 24 of the RTI Act reads as follows:

“Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.”

The RTI Act partially excludes the following from the ambit of the Act:

- Organisations specified in the Second Schedule
- Information furnished by such organisations to the Central Government

However, the following information is not excluded:

- Information pertaining to the allegations of corruption
- Information pertaining to the allegations of human rights violations

Approval of the Central Information Commission is required for disclosure of information in respect of allegations of human rights violations and maximum time limit is 45 days for such disclosures. It seems the excluded organisations need not obtain such approval from the Central Information Commission to disclose the information pertaining to the allegations of corruption.

Department of Personnel and Training (DOPT) issued a circular on 14 November 2007 advising all the organisations specified in the Second Schedule to designate Central Public Information Officers (CPIO) and First Appellate Authorities within the organisations and publish the details immediately.

The Second Schedule of the Right to Information Act as amended is as follows:

THE SECOND SCHEDULE
(See section 24)

Intelligence and security organisation established by the Central Government

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Sashastra Seema Bal.
16. Directorate General of Income-tax (Investigation).
17. National Technical Research Organisation.
18. Financial Intelligence Unit, India.
19. Special Protection Group.
20. Defence Research and Development Organisation.
21. Border Road Development Board.

ANNUAL REPORTS

Central Information Commission Annual Report

CIC Annual Report 2005-2006 states that the 837 monitored central public authorities received a total of 33,688 RTI requests during 2005-2006 (from 12 October 2005 to 31 March 2006).

Shri Suresh Pachouri, the Minister of Personnel, Public Grievances and Pensions answering a Question (Rajya Sabha Question No 2251, Answered on 20.03.2008) put by Shrimati Sushma Swaraj in the Rajya Sabha, stated, "As per information furnished by the Central Information Commission, 207860 applications were received under the Right to Information Act by various public authorities under the jurisdiction of the Central Government during the period from October, 2005 to March, 2007".¹

Maharashtra breaks its own record

Maharashtra Chief Information Commissioner Dr. Suresh Joshi has said the state leads in use of the Right to Information (RTI) Act. "Maharashtra leads in use of the RTI Act, as in 2007, 3,16,000 RTI applications were received from the state, in comparison to 31,000 applications received from Andhra Pradesh and 30,000-40,000 applications received from other states," Dr. Joshi said at a press conference.

This is 150% increase on the 1,23,571 applications received in the previous year (from 12 Oct. 2005 to 31 Dec. 2006).²

Good Practice: Offices at other places in the State

Maharashtra State Information Commission has established its Offices at other places in the State, headed by the State Information Commissioners as follows:

- 1) State Chief Information Commissioner (SCIC) – Dr. Suresh Vinayakrao Joshi
- 2) State Information Commissioner, Pune – Shri Vijay Kuvalekar
- 3) State Information Commissioner, Aurangabad – Shri Vijay Borge.
- 4) State Information Commissioner, Nagpur – Shri Vilas Patil.
- 5) State Information Commissioner, Konkan – Shri Navin Kumar
- 6) State Information Commissioner, Greater Mumbai – Shri Ramanand Tiwari.

¹ <<http://164.100.47.4/rsquestion/ShowQn.aspx?qno=134838>>

² UNI, August 02 2008, and, <<http://news.oneindia.in/2008/08/02/maharashtra-leads-in-rti-use-joshi-1217620911.html>>

Besides, Dr.Joshi has also proposed a second post of an information commissioner in Pune. However, Dr.Joshi has so far been unable to get the posts of information commissioners appointed in Nashik and Amravati.

The state government sanctioned these two posts a year and half ago, but has not selected candidates for the post. The government had short listed V N Deshmukh, former chairperson of MPSC, for the post in Amravati, but he was reluctant to accept. There was also a move to depute the information commissioner from Nagpur to Nashik .¹

Kerala State Information Commission

Kerala State Information Commission received a total number of 113187 requests, out of which 105126 were disposed of, during 2007-2008.

According to the Annual Report 2007-2008, “some noteworthy Decisions pertain to disclosure of:

- (i) copies of valued answer scripts of examinations, the results of which were published by the Public Service Commission;
- (ii) property statements of personnel of public authorities; and
- (iii) Reports of Public Enquiry Commissions available with the Government”.

Good Practice: Kerala State Information Reporter

In order to bring all orders issued by the Commission to the knowledge of the public at large, the Commission has been publishing a Quarterly Journal titled “Kerala State Information Reporter”. The journal contains important orders of the Commission, during the three months covering the quarter. Four issues of the journal have been brought out.

It is becoming increasingly difficult to study all the Decisions pronounced by the Information Commissions, many of which are on routine issues which have already been settled earlier, as we are completing third year of enforcement of the RTI Act, shortly.

As our High Court Judges do, our Information Commissioners themselves can choose interesting Decisions which reflect a new point of law or a new situation which needs to be studied.

A column may be introduced in the copy of the Decision Notice:
“Whether the judgment should be reported in the Digest? Yes / No”.

¹ <<http://economictimes.indiatimes.com/quickieartic leshow/3406940.cms>>

Such Decisions can be uploaded under separate link called, '*Decisions of note*', if it is not possible to publish a reporter as Kerala does.

Andhra Pradesh Information Commission

State public authorities received 31,964 requests during 2007 (1.1.2007 - 31.12.2007), the second year of the Act's operation. This is 260% increase on the 8864 applications received in the previous year (from 12 Oct.2005 to 31 Dec.2006).

Good Practice: Annual Report

Andhra Pradesh Information Commission is the first Commission to compile its first and second annual reports under section 25 of the RTI Act and to be tabled in the State Assembly.

The following initiatives were taken for awareness generation in Andhra Pradesh:

- preparation of slides for exhibition in cinema theatres and beaming of strips on TV channels;
- preparation of short films for telecasting on TV/cinema theaters;
- preparation of lessons on RTI for incorporation in school syllabi;
- display of information on boards and presentation of templates for rural areas;
- preparation of e-learning module on RTI under the technical support by the Centre for Good Governance, Hyderabad.

DOPT issued a letter No.1/12/2008-IR on 23 June 2008 to the Chief Secretaries of all the States/UTs requesting them to take similar actions/measures to ensure effective implementation of the provisions of the Act. A copy of the model lesson to be introduced in the Environmental Science of Class 5 was enclosed with the letter.

U.S.A. receives huge number of requests

The total number of Freedom of Information Act/Privacy Act access requests received by US federal departments and agencies during Fiscal Year 2007 was 21,758,651. This is 346,080 more than the number of requests received during Fiscal Year 2006, an increase of 2%.

Department of Veterans Affairs reported the largest number of requests, 2,008,589. Department of Health and Human Services received the second highest number of requests, 289,721, and Department of Homeland Security's total, 108,416, was third highest.

In Fiscal Year 2007, the total cost of all FOIA related activities for all federal departments and agencies, as reported in their annual FOIA reports, was an estimated \$369,431,500.55.

This figure marks a decrease of 7% from the preceding fiscal year. Over sixteen million dollars of these costs were reported as having been spent on litigation related activities. Of total costs, \$10,742,105.08, or 3%, was reported to have been recouped by the government -- albeit generally not by the individual federal agencies -- through the collection of FOIA fees. The federal department with the highest total costs was the Department of Defense, which spent nearly sixty-seven million dollars on FOIA related activities during Fiscal Year 2007.¹

U.K.

UK central government bodies received a total of 32978 nonroutine FOI and EIR requests during 2007, with a 2% reduction over the previous year. They received 33688 requests in 2006, with a 12% reduction over the previous year. 38108 requests were received in 2005, the first year of the FOI Act's operation.

¹ Summary of Annual FOIA Reports for Fiscal Year 2007, the Office of Information and Privacy, US Department of Justice

INITIATIVES

Value of Courtesy

‘Courtesy is, to be able to listen, to smile, and to take time in our dealings with each other’

-- Ian Gregory, Founder, Campaign for Courtesy (U.K.)

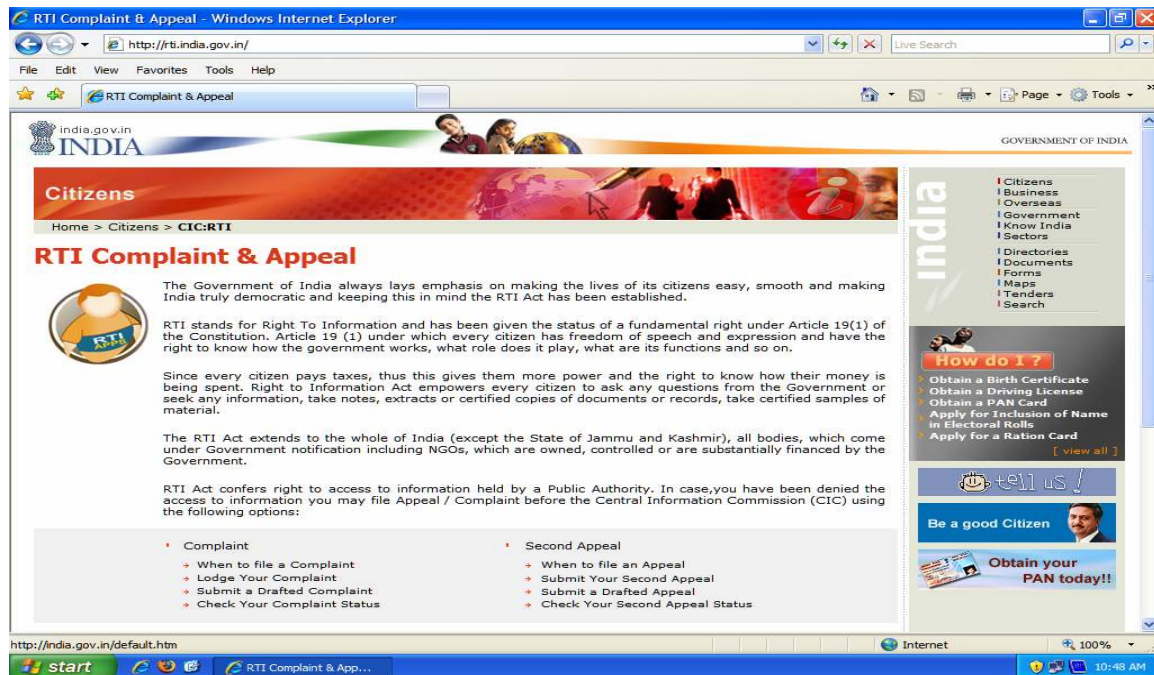
Department of Personnel & Training (DOPT), Ministry of Personnel, Public Grievances & Pensions instructs public authorities to draw attention to the value of courtesy.

DOPT issued an Office Memorandum No.4/9/2008-IR on 24th June, 2008, Which, among other things, states as follows:

"[T]he responsibility of a public authority and its public information officers (PIO) is not confined to furnish information but also to provide necessary help to the information seeker, wherever necessary. While providing information or rendering help to a person, it is important to be courteous to the information seeker and to respect his dignity.

Many organizations/training institutions are conducting training programmes on the Right to Information Act. The public authorities should ensure that their PIOs and other concerned officers are exposed to such training programmes. The public authorities may also organize training programmes at their own level. While imparting such training, the officers should be sensitized about the need of courteous behaviour with the information seekers."

Online mechanism enabling citizens to submit Complaints and Second Appeals



Screenshot of the recently launched online mechanism enabling citizens to submit Complaints and Second Appeals before the Central Information Commission

Government has recently launched online mechanism enabling citizens to submit Complaints and Second Appeals before the Central Information Commission, anywhere and anytime.

Visit: <<http://rti.india.gov.in>>

STORIES

RTI Exposes PDS Scam

Krishak Mukti Sangram Samiti (KMSS) used the Right to Information to expose corruption in the public distribution system and large-scale diversion of essential items meant for people below poverty line, in Assam.

Akhil Gogoi, General Secretary of KMSS, who had used the RTI Act to gather the facts said, “We have dug out over 1.85 lakh photocopies of documents from the district civil supply officials and village panchayats, which, when analysed in a scientific manner, have revealed massive irregularities in the public distribution system”, showing six stacks of documents to the media.¹

Gogoi and his team of 20 members spent over 45 days, working 16 to 18 hours a day to analyse the heaps of documents which they managed to extract from the authorities with a lot of difficulty despite making use of the Right to Information Act.

“It was a difficult task. Though we used provisions under the RTI Act, officials at various levels tried to stop us from extracting information. I submitted my application way back on March 5, but the authorities relented only after we approached the State Information Commissioner,” Gogoi said. He said he received the information only in October, which itself amounted to gross violation of the RTI Act.

He said while Golaghat district was allotted PDS items worth Rs 58 crore between April 2006 and March 2007, at least 2,719 quintals of Antyodaya rice and 5,425 quintals of BPL rice dispatched from the FCI godowns never reached the Samabaya Samiti (cooperative society) godowns.”

Later, an enquiry team has detected huge quantities of rice and sugar hoarded in Golaghat Officials entrusted with probing the allegations has seized 9,719.50 quintals of rice and 1,811 quintals of sugar, which were illegally stored in a godown, supposedly owned by the Golaghat Wholesale Cooperative Society at Dergaon but believed to belong to a private trader.

Akhil says, “*Hum paanch paanch rupai ikkhatta karke kaam chalate hain*” (We gather five rupee contributions and carry on our work). KMSS, the NGO, which has spearheaded this RTI movement against anomalies in the PDS, has been conferred The Second Manjunath Shanmugam Integrity Award, in March 2008.

¹ Samudra Gupta Kashyap, *After RTI disclosure, raids reveal PDS rice in godown*, <
<http://www.indianexpress.com/story/254593.html>>

**IC proposes but teacher deposes:
Student can inspect evaluated answer sheets of classmates**

The Central Information Commission (CIC) has directed a government school in the Capital to show the answer sheets of a Class IX student, Mohsin, a student of the Government Boys Senior Secondary School in Dilshad Garden in East Delhi, who failed his annual exams this year.

"We did this according to the Act, to maintain transparency," Information Commissioner O P Kejriwal said. He also imposed a penalty on the school for not furnishing the information within the prescribed time limit.¹

Mohsin sought photocopies of the answer sheets from the Public Information Officer, Department of Education, Government of NCT of Delhi.

Information Commissioner O.P. Kejriwal decided as follows:

- (i) The Applicant may be provided inspection of the answer sheet which at present was at the cluster level;
- (ii) The Applicant will be allowed to inspect his answer sheet and also be provided with a photocopy if he so desires; and
- (iii) The Appellant will be allowed to inspect the answer sheets of other colleagues of his but in such cases photocopies may not be provided.²

But the school authorities refused to show him the answer sheets and assaulted him, instead.

"Today [8 Aug.2008] while I was in the school toilet, my physical activity teacher came and started beating me indiscriminately. He threw me down the stairs and slapped me repeatedly," Mohsin said. "On Tuesday, when he reached school to inspect the answer sheets of other students, the school authorities threatened him and refused to show him any paper. They told him to go to the CIC again to get another order," Mohsin's father said. Jai Singh Yadav, when asked if he had indeed beaten the student, said: "I didn't do anything at all." He even threatened the reporter with dire consequences for reporting the incident.³

¹ Express News Service, June 10, 2008

² CIC/MA/C/2008/00221, Dated: 9 June 2008

³ <<http://www.ibnlive.com/news/delhi-student-beaten-by-teacher-for-using-rti/70660-3.html>>

OPEN WORLD

OPEN WORLD

Ever since the U.N. General Assembly recognized freedom of information as a fundamental human right in 1946, many nations started adopting laws assuring right to access information held by public authorities. So far more than 75 countries have enacted freedom of info laws, 64 of which were enacted during the last two decades.

Nepal

Nepal National Information Commission was constituted on 13 June 2008, under the chairmanship of Biaya Kasaju. Shree Acharya and Sabita Baral are members of the commission. Nepal's Right to Information Act 2007 was endorsed by the Interim Legislature Parliament on 18 July 2007.

Though there are many similarities between Indian and Nepalese laws, Nepalese law seems to be stronger:

Immediate disclosure of information

Information officer should provide the information immediately if the information by its nature could be provided immediately and the officer shall have to provide within fifteen days from the date of application if the information by its nature could not be provided immediately. If it is not possible to provide information immediately Information officer shall instantly provide a notice with the reason to the applicant.

Whistleblowers' protection

It shall be a responsibility of employee of public agency to provide information on any ongoing or probable corruption or irregularities or any deed taken as offence under the prevailing laws. If any punishment or harm is done to the whistleblower, the whistleblower may complaint, along with demand for compensation, to the commission for revoking such decision.

Data protection and correction of personal information

Public agency shall protect the information of personal nature held in for preventing unauthorized publication and broadcasting.

If anyone believes that the information in public agency on a certain topic is wrong, he may appeal to the concerned Chief along with necessary evidences for the correction of the information.

Political Parties are Public agencies

Public Agency includes registered Political Party.

Information Officers provide information to citizens. The only weak feature is that the requester has to mention the reason for the request.

Unofficial Translation of the law by Freedom Forum is available at Citizens' Campaign for Right to Information's website < www.rtinepal.org >.

Honduras

Honduras has joined the growing number of Latin American countries that have passed access to information laws. Honduran Congress approved a Transparency and Access to Public Information Law, which took full effect in January 2008.

On 23 November 2006, congress approved the Transparency and Access to Public Information Law (*Ley de Transparencia y Acceso a la Información Pública*).

The law provides for the establishment of an independent body called the National Institute for Access to Public Information (*Instituto Nacional de Acceso a la Información Pública, IAIP*) that will process public requests for government information and oversee the law's implementation.

Honduras is the sixth Latin American country to pass an access to information law, joining Belize, Colombia, Ecuador, Mexico, Panama and Peru.



Bacab, the supernatural creatures believed to hold up the corners of the sky¹

China

The Regulations of the People's Republic of China on Open Government Information (OGI Regulations) entered into force on 1 May 2008 (published on April 24, 2007).

¹ < <http://fotomaya.com/Copan-Honduras-bacab.html> >

These Regulations will cover the disclosure of information with regards to government plans for emergencies, government spending, fees for public services and results of investigations into environmental protection, public health and food and drugs safety. It will put the onus on local governments to publicize data on land acquisitions, residence relocations and related compensation, as well as aims to reduce corruption regarding the family planning laws.¹

Chinese Government is now planning to survey the country's major sources of pollution and publish the China Pollution Source Census. The survey will collect information on factories, farms and other entities that discharge pollutants. The information will be compiled in the China Pollution Source Census which will be published next year. As part of this project, the census officials have set up a hotline for citizens to report polluting firms.

China has painfully recognized the importance of free flow of information after the SARS debacle. SARS first broke out on the Chinese mainland, but the authorities covered up the information, leading to a global epidemic. It took health authorities at the disease's epicenter, from November until late January (2003) to begin classifying the disease as a potential epidemic. They did not address the issue publicly until February, when they said everything was "under control." And the central government did not share any information with outside doctors until almost six weeks after that, by which time SARS had taken Hong Kong by surprise. Dismissal of Health Minister Zhang Wenkang and Beijing Mayor Meng Xuenong showed to some extent Premier Wen Jiabao was serious about penalizing officials for "delayed reporting, under-reporting or hiding of facts" relating to SARS.

Chile

In January 2008, the Chilean Congress approved new and comprehensive access to information legislation. This law extends application of the right to request information to decentralized and autonomous agencies. It also creates an autonomous, four-member Transparency Council charged with promoting full government transparency and guaranteeing the right to access information held by public bodies.

The Price of Silence, The Growing Threat of Soft Censorship in Latin America, Open Society Justice Initiative, Open Society Institute, New York

The "*Ley sobre Transparencia de la Función Pública y Acceso a la Información de los Órganos de la Administración del Estado*" (Law on Transparency of Public Functions and Access to Information of the Agencies of State) was signed by

¹ <<http://www.article19.org/pdfs/press/china-environmental-pollution-foi.pdf>>

President Michelle Bachelet on 11 August 2008. The law establishes a unique "Council for Transparency" to oversee and arbitrate the release of government documentation.

The right-to-know movement received a major boost in October 2006, when the Inter-American Court ruled in a case, *Claude Reyes and Others v. Chile*, that the Chilean government had improperly withheld information from environmental groups on a deforestation project known as Rio Condor. The Court ordered the Chilean government to adopt legal measures "to guarantee the effectiveness of an adequate administrative process for dealing with requests for information, which sets deadlines for providing the information."¹



The Rio Condor Valley in Chile

Our neighbors are following us!

Bangladesh proposed Right to Information Ordinance 2008 is under consideration.

¹ < <http://www.freedominfo.org/news/20080813.htm> >

A top Sri Lankan judge has called for laws such as a freedom of information act to enable people greater access to information to create an 'informed public' that is essential for a democratic society.

Justice Saleem Marsoof, President's Counsel and Judge of the Supreme Court of Sri Lanka said most democracies now have legislation providing a mechanism through which the public can have access to information. Excerpts from Marsoof's speech:

"The proper implementation of such legislation has in turn resulted in greater transparency and accountability while reducing the level of corruption in these countries.

However, the people can exercise their sovereignty effectively only if they are well informed.

My experience is that in most democracies misinformation and disinformation has become a fine art, and any one in control of the popular media can come into power. Only an informed public can take the right decisions, whether at elections or referenda.

It is therefore imperative for good governance that the public has access to accurate, complete and timely information so vital for its decisions."

Marsoof also said a recent supreme court ruling that said there were irregularities in the privatization of the state bunkering monopoly and which fined the treasury secretary should be a warning to corrupt public servants.

"It is the failure on the part of an increasingly greater number of public officers to adhere to principles of good governance that resulted in unfortunate decisions such as the recent judgement of the Supreme Court," he said.

The court cancelled all agreements between the Board of Investment and bunkering firm Lanka Marine Services Ltd., for the sale of its shares as part of the process of privatization. The court also said John Keells Holdings, which bought LMS, had obtained illegal benefits in the privatization exercise.¹

Comprehensive Charter for patients' rights

Surprisingly, Sri Lanka is taking proactive steps to give their citizens right to medical information. "Legislation to implement a comprehensive and effective Charter of Patients rights and Responsibilities will be presented to Parliament within a few months", Health Minister Nimal Siripala de Silva announced recently.

¹ Sri Lankan judge calls for freedom of information law, Lanka Business Online, 25 Aug.2008

Several groups including the Sri Lanka Medical Association, the Peoples Movement for the Rights of Patients and the Law and Society Trust have already submitted draft charters.

Patients' rights refer to what is owed to the patient as a human being by the healthcare providers and the State.

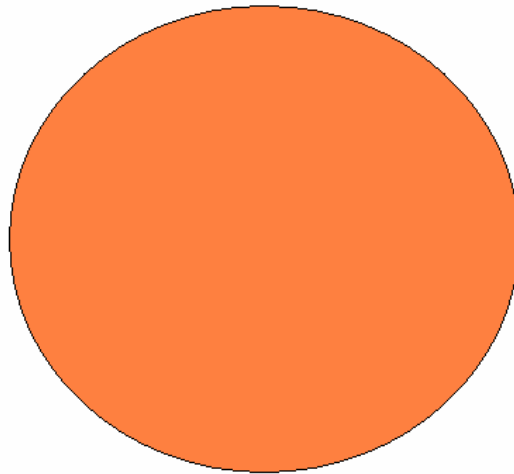
"We are at a stage where the public will not accept that patients' rights can be affirmed in theory, but then denied in practice, because of financial limits. Financial constraints, however justified, cannot legitimize denying or compromising patients' rights," the draft says.

The Charter includes the Right of Access to Healthcare Services and to Humane Treatment; Right to Information, Consent, Privacy and Confidentiality; Right to Complain and Compensation and the Right to Preventive Measures.

The Minister has assured that this legislation – intended mainly to make quality drugs available to all people at affordable prices will be presented to Parliament and implemented soon.¹

¹

< http://www.sundaytimes.lk/080727/News/sundaytimesnews_19.html >



Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.



-- Louis Dembitz Brandeis, former U.S. Supreme Court Justice,
Other People's Money, and How the Bankers Use It (1914)
[Photo source :< <http://upload.wikimedia.org/wikipedia/commons/a/a6/Brandeisl.jpg>>]

REPORTS

Twelfth Report of Committee of Privileges

Twelfth Report of Committee of Privileges (Fourteenth Lok Sabha) on “Requests from Courts of Law and investigating agencies, for documents pertaining to proceedings of House, Parliamentary Committees or which are in the custody of Secretary General, Lok Sabha, for production in Courts of Law and for investigation purposes” was tabled in the Lok Sabha on 30 April, 2008.

The Committee of Privileges, headed by Shri V.Kishore Chandra S.Deo, has commented on section 8 (1) (c) of the RTI Act, as follows:

“The Committee would like to emphasize that it is quite difficult to lay down and visualise all the situations wherein the disclosure of information pertaining to Parliament would cause a breach of privilege of the Parliament. As of now the information, the disclosure of which would constitute a breach of privilege could arise in situations like disclosure of proceedings of secret sittings of the House held in terms of provisions of Rule 248 of the Rules of Procedure and Conduct of Business in Lok Sabha, disclosure of proceedings (including evidence) or Report of a Parliamentary Committee before such proceedings or evidence or documents or Report have been reported to the House.”

The Committee stated that disclosure of information contained in the following category of documents does not involve calling in question the proceedings of Parliament or its Committees and such documents may be made available with the permission of the Speaker, in the interests of transparency in governance:

Documents in the custody of Secretary-General pertaining to information relating to members, like:

- the number of days a member attended sittings of the House/Committees;
- TA/DA drawn by a member during a specified time;
- documents submitted by a member;
- information submitted by a member regarding his assets and liabilities;
- the names and addresses of PAs, etc. employed by member and so on.

The Committee has made following observations:

“While the courts of law and investigating agencies would be required to state the purpose for which request for documents relating to the proceedings of the House, its Committees, members etc., are required there is no such stipulation with regard to requests received for such documents by a citizen of the country under the Right to Information Act, 2005.”

“[T]he Parliament certainly has a right to know the reason for which a citizen of the country requires documents/information relating to the proceedings of the House, its Committees, Members etc. so that it can decide for itself whether the request has any potential of calling the proceedings of the House/Committee into question in any court or place out of Parliament.”

Based on these observations, the Committee has made the following recommendations:

“(VII) The Government may bring forward an amendment to the Right to Information Act, 2005 on the following lines:

(a) It may be made incumbent upon an applicant requesting for information/document which come under the jurisdiction of the House to state the reasons for which the information/documents are required;

(b) If, in the opinion of the Speaker, the information/documents sought for have the potential to call in question the proceedings of the House or of any Committee of the House, in any court he may be empowered to refer such a request to the Committee of Privileges for examination and report.

(c) In the event of such a reference being made to the Committee of Privileges, the time limit prescribed in the Act for furnishing information/documents may not be applicable. On such a reference being made, the information/documents sought for may be furnished only if so recommended by the Committee of Privileges and agreed to by the House.

(d) Decision taken by the House/Speaker may not be open to review by the Chief Information Commissioner.”

Twenty fifth Report of the Parliamentary Standing Committee on Personnel, Public Grievances

Twenty fifth Report of the Rajya Sabha Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on Demands for Grants (2008-2009) of the Ministry of Personnel, Public Grievances and Pensions was presented to the Rajya Sabha on 29 April, 2008.

The Committee, headed by Dr. E.M. Sudarsana Natchiappan has made important recommendation regarding initial application fee:

“26.5. The Committee opines that the application under RTI Act should not be rejected for non payment of fee at the initial stage and then incur expenditure for defending cases in High Courts. Instead the applications should be entertained and the fee may be added at the time of receiving the information in such cases.”

The Committee has made important statement regarding applicability of the Act to the judiciary:

“53.1. The Committee discussed about the interpretation of Section 2(h) of the RTI Act i.e. definition of Public Authority wherein sub clause (a) is very clear that all the Constitutional authorities come under the definition of public authority. This Committee had examined in detail every clause of RTI Bill, 2004 which was referred to it for consideration and report. It is conscious of the fact that all the three wings of State- executive, legislature and judiciary- are fully covered under this Act, since all organs of the State are accountable to the citizens of India in a democratic State. It is more so since the judiciary is having dual role as (i) administrative function; and (ii) judicial decision making. *Except the judicial decision making, all other activities of administration and the persons included in it are subject to RTI Act.* This is the pith and substance of this enactment. This Committee is also conscious of all the amendments proposed by this Committee which were also accepted by the executive and Parliament.

53.2. The Committee recommends that the Ministry should address the issues highlighted above and take necessary steps to ensure that the fruits of the RTI Act, which is a historic piece of legislation, are enjoyed by the public.”[emphasis not in original]

UPSC had to face wrath of the Committee, which makes an interesting reading:

“31.6. UPSC, being a Constitutional body should uphold high standards of transparency and accountability. But strangely UPSC is projecting it as above the law of the land. It does not want to give information under the RTI Act. It does not want to tell how it is spending the public money given to it and it is

accountable to none, although it is a creature of the Constitution. This attitude of UPSC is certainly antithetic to the principles of Parliamentary democracy like ours. Although the action of UPSC is reprehensible and falls within the purview of the breach of privilege of Parliament, since this Committee itself acts as Parliament, it takes a lenient view and before resorting to the inherent powers of breach of privilege, it recommends that the Government should deliberate upon the situation at the highest level and take necessary action to ensure that such a grave lapse and subversion of democratic norms set forth by the Constitution does not occur in future.”

The Committee appreciated the web-enabled portal -www.rti.org.in :

Capacity Building and Awareness Generation for Right to Information and implementation of the Act

26. The Ministry, in its Annual Report, has stated that in partnership with United Nations Development Programme (UNDP), a comprehensive approach has been taken under the Capacity Building Programme on Access to Information to operationalize the Right to Information Act, 2005. The project aims to work in two districts each in all States in India to enhance the capacities of government officials as information providers, of citizens as information seekers, and a range of actors to facilitate the sharing of information. Nearly 3900 participants have been trained under the project. The project has created a bank of RTI manuals and guides. Almost all states have translated the RTI Act and Manuals/Guides into the local languages. Mass awareness activities have been undertaken in various states through various media modes including more than 7 lakh pamphlets, brochure and posters, 100 radio programmes, 900 television adverts/shows and 300 kalajathas/road shows/ puppet shows. It has brought important stakeholders together on different platforms to discuss and deliberate on key issues. The project has enabled an online knowledge and networking hub on RTI through a web-enabled portal -www.rti.org.in. This portal is one of its kinds in the country and provides a wide range of information and networking opportunities for RTI practitioners and citizens.

Report of National Sub Committee of Central Information Commission

Implementation of Right to Information Act, 2005, Report of National Sub Committee of Central Information Commission was released recently.

Central Information Commission vide notification dated 5 December, 2007, constituted the Sub Committee for coordinating the suggestions received from State Commissions and to review the suggested amendments in the Act with the following members:

- Sh. Rajan Kashyap, CIC-Punjab, Convenor
- Sh. K. K. Misra, CIC-Karnataka
- Sh. Suresh Vinayakrao Joshi, CIC-Maharashtra
- Sh. P. Talitemjen Ao, CIC, Nagaland
- Justice Shashank Kumar Singh, CIC-Bihar
- Sh. A. K. Vijayavargiya, CIC-Chattisgarh
- Dr. R. S. Tolia, CIC-Uttarakhand
- Sh. G. Madhavan, CIC-Haryana
- Prof. M. M. Ansari, CIC-New Delhi
- Sh. C.D. Arha, CIC-Andhra Pradesh (co-opted on 4th January, 2008)

The Committee consisted of ten members, of which nine are Chief Information Commissioners of States and one a Central Information Commissioner.

In order to study and develop an understanding about the working of various State Information Commissions in the country, the Committee held five meetings at Chandigarh, Hyderabad, Bangalore, Pune and New Delhi.

Key statements made by the Committee:

Effective implementation of the Right to Information Act depends on the following fundamental shifts:

- ⇒ From the prevailing culture of secrecy to a new culture of openness.
- ⇒ From personalized despotism to authority coupled with accountability.
- ⇒ From unilateral decision-making to participative governance.

Key recommendations made by the Committee:

- ✓ The offices of all Public Authorities should display a standard board containing essential information about them under RTI Act.
- ✓ Decentralized working of State Information Commissions by creating Regional Offices and Benches.

- ✓ As the Central Departments are located in different parts of the country, the presence of the SICs may provide necessary support to the CIC for processing appeals and complaints for speedy disposal of cases by the CIC. The modalities of cooperation between SIC and CIC may be worked out with mutual consultation. In effect, thus, the functioning of the CIC could be decentralized with a view to facilitating faster resolution of disputes between the information seeker and provider. Support of SICs for establishing such local offices is critical
- ✓ A directory of ASPIOs, SPIOs and First Appellate Authorities at the district level should be available with the public authorities to be made available to the information seeker at a fixed price.
- ✓ The appropriate government as a matter of policy should earmark a certain percentage of budget in each department for implementation of RTI related programmes including publicity, creation of infrastructure, training programmes etc. The departments should be asked to distribute the budget to their district offices to give a push to the RTI related activities and programmes.
- ✓ There is no doubt that some of the documents like railway tickets, bus tickets, ration cards, etc may carry appropriate messages on Right to Information.
- ✓ The Committee recommends that a nodal centre may be established to collect, compile and analyze relevant information relating to the implementation of the Act. The C/SICs may provide necessary financial wherewithal for managing the centre. The details of activities relating to the documentation work may be identified by the Committee in accordance with the major roles of the C/SICs as envisaged in the Act. It was felt that an institution such as Centre for Good Governance Hyderabad is ideally placed to carry out these functions under the over all guidance of the National Coordination Committee (presuming that the Committee is to continue to play a role).
- ✓ Development of National Portal on RTI as a Common IT Gateway to SICs: A national portal on RTI can enable better networking and sharing of information and ease of access to the SIC websites. This portal would be developed on the lines of the COURTNIC system adopted by the Judiciary. In order to enhance the utility of the system, it would contain more value added features. Like in the COURTNIC portal, this IT gateway could provide hyper links to individual websites designed and

maintained by the respective Information Commissions. The data updation would be the responsibility of the respective Information Commissions and this portal would only provide one common platform to access the information from any of the Information Commissions.

CONFERENCES

Atlanta Declaration and Plan of Action for the Advancement of the Right of access to Information

The *Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information* was released by the Carter Center, founded in 1982 by former U.S. President Jimmy Carter, on 26 March 2008. This is a product of 'International Conference on the Right to Public Information', held at the Carter Center in Atlanta on 26-29 February 2008.



In July, Jimmy Carter forwarded the Declaration to all heads of state and leaders of the major international organizations and financial institutions. He urged these leaders to ensure the right of access to information and its implementation and enforcement.

Key features of the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information

Findings of the Declaration include:

- The fundamental right of access to information is inherent in all cultures and systems of government.
- ⇒ A lack of access to information disproportionately affects the poor, women and other vulnerable and marginalized people, and as such the right should be guaranteed to all sectors of society.
- ⇒ The right of access to information is fundamental to human dignity, equity and peace with justice.
- Enacting a comprehensive law is essential, but insufficient, to establishing and sustaining the right of access to information.
- ⇒ Equally important is constructing an appropriate institutional framework and developing public administration capacity to manage and provide information.
- ⇒ It also is critical to raise public awareness of the right of access to information, ensure capacity to exercise the right including through public education, and foster support for transparency among all sectors of society.

Key principles set out in the Declaration include:

- Access to information is a fundamental human right.
- The right of access to information should extend to non-state actors under the conditions enumerated in principle 5 below:

5. The right of access to information also applies to non-state actors that: receive public funds or benefits (directly or indirectly); carry out public functions, including the provision of public services; and exploit public resources, including natural resources. The right of access to information extends only to the use of those funds or benefits, activities or resources. In addition, everyone should have the right of access to information held by large profit-seeking corporations where this information is required for the exercise or protection of any human right, as recognized in the International Bill of Rights.

The *Plan of Action*, amongst other things, calls upon all Intergovernmental organizations - including the United Nations and all of its bodies, Council of Europe, Organization of American States, African Union, the Organization for Economic Cooperation and Development and international financial institutes, regional development banks, and trade bodies - and international and domestic non-governmental organizations should give effect to the right of access to information in accordance with the findings and principles enumerated above.¹



The largest ever international civil society gathering on access to information: 125 participants from 40 countries representing the key stakeholder groups - governments, civil society, international and regional organizations, media, international financial institutions, donor organizations and foundations, academia, and the private sector at the 'International Conference on the Right to Public Information'.

Photo credit: Carter Center/C. Mackey

¹<<http://www.cartercenter.org/documents/Atlanta%20Declaration%20and%20Plan%20of%20Action.pdf> >

Free flow of information within the government and among different levels of government is key for good governance

An Experts Group Meeting on *Freedom of Information and Sustainable Development, Sealing the Link* was held at UNESCO Headquarters, Paris on 17-18 March 2008, stated that free flow of information within the government and among different levels of government is key for good governance.¹

The Experts' Meeting brought together a panel of approximately 30 experts from all regions to debate issues related to the right to access to information held by public bodies and its impact on sustainable development worldwide.

This meeting coincided with the launch of the revised and updated edition of the publication "Freedom of Information: a Comparative Legal Survey", which was presented by its author Toby Mendel. The book is meant to present the basics of freedom of information or right to information, defined as the universal right to access information held by public bodies.

At the launch, the author noted that "since the last edition five years ago, we can now say that every region of the world has adopted right to information laws." Mr Mendel also added that the right to information is now internationally established as a fundamental right generated by the right to freedom of expression.

Final report of the UNESCO Experts Meeting held, Drafted by Caroline Millet gives an interesting example of Kenya, showing how transparency benefits the representatives of the people:

"How open information disclosure is beneficial to politicians:

Recently a constituency development fund initiative was set up in Kenya. It was allocated by the central government and managed by Members of Parliament (MP) and local governments.

Some MPs chose not only to share information about the fund- how to apply, what it could help finance- with their constituents; but they also consulted them as to what they saw as development priorities in their locality. In contrast, some other MPs did not share the information or simply chose to decide for themselves what they saw as regional priorities for their constituents.

The lesson to be learnt for politicians worldwide is that those who were open about the information were re-elected because they were transparent about the

¹ To know more about the Conference, visit < http://portal.unesco.org/ci/en/ev.php-URL_ID=26073&URL_DO=DO_TOPIC&URL_SECTION=201.html>

information available to them and were seen as representing the interests of their electorate.”



Expert meeting Freedom of Information
[Photographer: UNESCO/Velislava Koleva]

Recommendations of the Working Groups:

“If RTI is to be upheld and referred to as fundamental for sustainable development, one needs to break down this link and the resulting benefits more concretely by contextualizing them into practical uses. Many of the same problems are common throughout the world, which means that numerous priorities are shared by different countries. These include:

- Alleviating poverty
- Fighting corruption
- Increasing people’s awareness of their rights
- Ensuring a secure environment
- Encouraging civil society participation
- Ensuring viable electoral processes

What are the barriers and challenges facing sustainable development through access to information?

People living in poverty face systematic barriers to access to information and yet it is the precursor to having a voice and participating in their own development.

The most common barriers include:

- Low levels of education
- Lack of literacy
- Poor transport and communication infrastructures
- The unavailability of information in local languages, overly technical language
- Discrimination in term of gender, income, “caste”, or disability, etc.
- The lack of political will to make the information available

Although RTI policy, law and administrative procedures are fundamental components of enabling RTI access, other factors are also essential. These include adequate communication infrastructures including access both to the internet and to a plurality of media outlets.

Different kinds of information are required as a precondition for varying types of citizen participation. The Government must provide the public with a full scope of information regarding its work, no matter whether the evaluation is positive or negative.

If civil society is not engaged the law will very probably fail. In order to get civil society engaged, it is necessary to establish the connection between RTI and people’s basic everyday needs.

There is a challenge in how to sustain civil society interest even when the expectations on the law and its benefits are not fulfilled in the short term.

Concretely, governments need to:

- Establish a strong and independent oversight body
- Train officials in RTI procedures
- Identify and support those who make RTI a priority

Provision of information should be timely in order to allow effective participation in the implementation of development policies.

RTI activists need to change attitudes within government and emphasize that RTI and communication is also good for the government. Including officials and politicians themselves and their perception of the benefits of RTI.

Different public agencies in government should share information and best practices. Free flow of information within the government and among

different levels of government is key for good governance and a successful development policy.

It is necessary to strengthen advocacy by documenting our knowledge about the benefits of freedom of information, in order to cement the links between access to information and development.

Openness needs to become a part of the development process at all levels, including donors. Aid effectiveness cannot be measured if there is no openness and access to information.

NGOs should be more open and transparent.”



An Ocean of questions in a teardrop

-- Art by M. Krishna Murthy, Hyderabad