

NFICI

Conference & Workshop

September 28-29, 2018
Jaipur



Rajasthan State Information Commission
Jaipur

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Jaipur, 28th-29th September 2018

NFICI Conference and Workshop

Jaipur, 28th & 29th September 2018

List of Participants

1. Shri R. K. Mathur, IAS (Retd.), CIC, Central Information Commission.
2. Shri Himangshu Sekhar Das, IAS (Retd.), SCIC, Assam State Information Commission.
3. Shri Prashant Sadashiv Prabhu Tendolkar, SCIC, Goa State Information Commission.
4. Dr. A.K. Sinha, IAS (Retd.), SCIC, Bihar State Information Commission.
5. Shri L. Krishnamurthy, SCIC, Karnataka State Information Commission.
6. Dr. Joram Begi, SCIC, Arunachal Pradesh State Information Commission.
7. Shri S.S.Channy, IAS (Retd.), SCIC, Punjab State Information Commission.
8. Shri M.K. Raut, SCIC, Chhattisgarh State Information Commission.
9. Shri Suresh Chowdhary, IPS (Retd.), SCIC, Rajasthan State Information Commission.
10. Shri D.P. Thaker, SCIC, Gujrat State Information Commission.
11. Shri Yash Pal Singal, IPS (Retd.), SCIC, Haryana State Information Commission.
12. Shri Sunil Kumar Misra, IRS (Retd.), SCIC, Odisha State Information Commission.
13. Shri Laldhuthlana Ralte, IFS (Retd.), SCIC, Mizoram State Information Commission.
14. Dr. M. Sheela Priya, IAS (Retd.), SCIC, Tamilnadu State Information Commission.
15. Shri Thounaojam Ibobi Singh, IFS (Retd.), SCIC, Manipur State Information Commission.
16. Shri Mohammad Ashraf Mir, SIC, Jammu & Kashmir Information Commission.
17. Shri K V Sudhakaran, SIC, Kerala Information Commission.
18. Shri S Somanathan Pillai, SIC, Kerala Information Commission.
19. Shri C.M. Meena, SIC, Rajasthan State Information Commission
20. Shri Ashutosh Sharma, SIC, Rajasthan State Information Commission
21. Ms. Sashiprabha Bindhani, SIC, Odisha State Information Commission.
22. Ms. Pratima Vernekar, SIC, Goa Information Commission.
23. Shri Juino De Souza, SIC, Goa Information Commission.
24. Shri Anil Kumar Gehlot, Joint Secretary (MR), Central Information Commission.
25. Shri Radhay Pratap Singh, Secretary, Rajasthan State Information Commission
26. Shri Hanuman Sharan Sharma, OSD cum Registrar, Rajasthan State Information Commission
27. Shri U.S. Palawat, Consultant, Rajasthan State Information Commission
28. Shri G.S. Yadav, Consultant, Rajasthan State Information Commission
29. Shri R.K. Rawat, Consultant, Rajasthan State Information Commission

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Programme Schedule

28th September 2018

<i>Gathering of delegates</i>	<i>3.50 PM to 4.00 PM</i>
<i>Welcome of delegates by CIC, Delhi</i>	<i>4.00 PM to 4.10 PM</i>
<i>Address by CIC Rajasthan on workshop modalities</i>	<i>4.10 PM to 4.15 PM</i>
<i>First session - chaired by Dr. S.S.Channy, CIC Punjab</i>	<i>4.15 PM to 5.15 PM</i>
Paper presentation by Shri S.S.Pillai IC, Kerala State Information Commission and discussion on sharing of best practices for mitigating problems of misuse of RTI Act.	
<i>Second session - chaired by Sh. P.S.P. Tendolkar, CIC Goa</i>	<i>5.15 PM to 6.15 PM</i>
Discussion on promoting pro-active disclosure/dissemination of information	
<i>Break for the day</i>	<i>6.15 PM</i>

29th September 2018

<i>Assembly of delegates</i>	<i>9.50 AM to 10.00 AM</i>
<i>Third session - chaired by Dr. M. Sheela Priya, CIC Tamil Nadu</i>	<i>10.00 AM to 11.00 AM</i>
Discussion on strengthening the role of First Appellate Authority	
<i>Fourth session - chaired by Dr. A.K. Sinha, CIC Bihar</i>	<i>11.00 AM to 12.00 Noon</i>
Discussion on understanding the concept of "Public Interest" with respect to RTI Act 2005.	
<i>Fifth session - chaired by Shri Suresh Chowdhary, CIC Rajasthan</i>	<i>12.00 Noon to 1.00 PM</i>
Open house – discussion on other topics of interest.	
<i>Round up of deliberations by Shri Sunil Kumar Mishra, CIC Odisha</i>	<i>1.00 PM to 1.20 PM</i>
<i>Vote of thanks by Shri H.S. Das, CIC Assam</i>	<i>1.20 PM to 1.30 PM</i>

Jaipur, 28th-29th September 2018

NFICI Conference and Workshop
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Proceedings of the Conference - cum - Workshop on RTI held at
Jaipur on 28th & 29th September 2018

by Sunil Kumar Mishra, SCIC Odisha

A seminar-cum-workshop on RTI was held at Jaipur, Rajasthan on 28th and 29th September 2018 under the auspices of the National Federation of Information Commissions of India. The Chief Information Commissioner of the Central Information Commission and Chief Information Commissioners as well as some State Information Commissioners of 16 State Information Commissions participated in the conference cum workshop.

The following subjects were deliberated upon:

- 1) Mitigating the commonly faced problem of misuse of the RTI Act, 2005 by some information-seekers thereby adversely affecting the effective functioning of the Commissions,
- 2) Promoting pro-active disclosure / dissemination of information by the public authorities,
- 3) Strengthening the role of the First Appellate Authorities in the implementation of the RTI Act, 2005,
- 4) Understanding the concept of “public interest” envisaged in the RTI Act, 2005, and,
- 5) Sharing of best practices followed by different Commissions in the Country.

Inaugurating the conference, Shri R.K. Mathur, Chief Information Commissioner of the Central Information Commission, highlighted the importance of the subjects chosen for deliberation and also underscored the urgency of participants sharing their respective experiences and suggesting ways and means of dealing with the problems confronted by the Commissions in the implementation of the RTI Act, 2005.

FIRST SESSION:

The first session which was on abuses of the RTI Act was chaired by Shri S.S. Channy, State Chief Information Commissioner, Punjab Information Commission.

Shri Channy commenced the Session by putting things in perspective. He stated that while the RTI Act, 2005 was a much-needed legislation, and, in fact, a sunshine Act, many PIOs have been found to be disloyal to the task, the First Appellate Authorities have proved to be the weakest link in the chain and some information-seekers are misusing the rights under the Act for vested interests thereby coming in the way of expeditious relief to majority of information-seekers who are in genuine and urgent need of information.

This was followed by presentation of paper by Shri S. Somanathan Pillai, State Information Commissioner, Kerala. Shri Pillai suggested that the Preamble to the Act which seeks to harmonize the public interest of providing to the citizens greater and more access to information with the equally important public interest of efficient operations of the Government, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information in itself

shows the way how abuses of the Act can be dealt with. In short, the other public interests referred to in the Preamble provide the yardsticks by which persons making barrage of repetitive and multiple applications thereby seeking irrelevant and unrelated information often driven by malice, personal vendetta etc. can be denied information. The learned presenter also invited attention to Sections 8, 9, 10 and 11 of the RTI Act, 2005 which take care of such other public interests referred to in the Preamble and also provide adequate safeguards against actual and possible abuses.

During the discussion that followed, while the House agreed that the Preamble as well as Sections 8, 9, 10 and 11 provide safeguards against abuses, it was also felt that these have not been found to be sufficiently effective. The participants therefore suggested the following practices which would help curb or minimize the abuses:

- a) All the appeals should be digitized which would help in identification of information-seekers filing multiple applications seeking the very same information with cosmetic changes.
- b) Once such identifications are made, such appellants / information-seekers can be placed low in prioritization so that cases of genuine information-seekers are not made to wait.
- c) Information-seekers found to be seeking information for settling personal scores or with the malicious intent of scoring personal vendetta can also be declared as abusers so that such practices do not recur.
- d) The subject being sensitive, it could be flagged for intense deliberation on a larger scale with the participation of members of the Civil Society most of whom undoubtedly are votaries of the RTI Act and its Frontrunners; and, who do not want the wheel of the revolutionary legislation of the RTI Act, 2005 to get clogged by the pernicious actions of a few abusers who have little concern for issues relating to sanitization of governance and are instead driven more by other vested interests.
- e) Some participants felt that one of the causes behind multiple and repetitive applications could also be that several PIOs are found to be in a denial mode which therefore does not inspire confidence in the information-seekers who, therefore, keep on filing applications hoping that their applications would be noticed at some point of time or the other. It was therefore suggested that the PIOs must be sensitized about the importance of the RTI Act which confers on the citizens of this Country a fundamental right and that such a sacrosanct right must be treated with utmost care and respect.

SECOND SESSION:

The second session which was chaired by Shri P.S.P. Tendolkar, Chief Information Commissioner of the Goa Information Commission, deliberated on the subject of compliance by the public authorities with the provisions of Section 4 of the RTI Act in general and with Clause (b) of Sub-section (1) of the said Section in particular. The Chair set the discussion in motion by emphasizing that Section 4 constitutes the very core of the Act and if due compliance with the mandates of the said Section could be ensured, most of the problems being confronted by the information-seekers, and no less by the Commissions, could be solved.

The house agreed with the point made by the Chair. It was strongly felt by all present that the Commissions have virtually become mute spectators to the phenomenon of non-compliance which only adds to the disservice to the citizens of this country. The reasons for the malaise are well known. Compliance with Section 4 does not call for any political will. It requires will on the part of the Heads of the Ministries. In short, it is a bureaucratic work. It was therefore felt that

due monitoring must be made by the Commissions themselves to ensure that the Ministries fall in line so that the objective of Section 4 “that the public have minimum resort to the use of this Act” to obtain information could be achieved. It is also necessary that a few legal remedies are suggested to the appropriate Governments.

Monitoring by the Commissions

1. Shri R.K. Mathur, Chief Information Commissioner, Central Information Commission exhorted that the Commissions themselves must begin with the exercise of self-disclosure. Charity must begin at home.
2. Shri Mathur also advised the Commissions to do Transparency Audit of the disclosures being made by the public authorities in a select manner. Of course, burdened as the Commissions are with the onerous task of adjudication, they cannot do such audit on large-scale. However, periodical desk-top exercises and sending signals to the defaulting Ministries could be done and, in fact, would greatly help. In cases where such exercises were undertaken with persistent follow-ups, the concerned public authorities have responded.
3. The host Chief Information Commissioner, Shri Suresh Chowdhary, suggested that annual audit of pro-active information disclosure must be made mandatory and every public authority must also be made to display such audit reports on its website.
4. The Chief Information Commissioner of Manipur, Shri Ibobi Singh, suggested from his own experience that after the annual reports are tabled in the Legislature, the recommendations made in the reports should be consistently followed up so that these are not lost sight of and can be implemented sooner or later.
5. Ms. Sashiprabha Bindhani, State Information Commissioner, Odisha Information Commission, stated that most of the grievances raised by the citizens through the applications made under the RTI Act are found to be related to denial of or delay in access to benefits under various Social Security Schemes. It is, therefore, imperative that all such Schemes and the implementation thereof are continuously uploaded on the websites of the public authorities and robust grievance-redressal mechanisms are also put in place. She also made particular reference to clause-(v) of Section 4(1)(b) and the urgency of thorough compliance with the mandate of the above cause.

Legal Remedies

1. Shri Juino De’ Souza, State Information Commissioner of Goa, recommended that there must be an Information Storage Act as well as an Information Management Act without which it would be difficult to implement the mandate of Section 4, particularly of Sub-section(1) thereof. Shri De’ Souza also felt that the Commissions must issue stringent structures against the public authorities who are found to be defaulters in the matter of compliance with Section 4(1)(b) of the Act.
2. It was suggested by Shri H.S. Das, Chief Information Commissioner, Assam Information Commission, that all States must have Public Records Act with punitive measures prescribed for action against persons guilty of not maintaining records or responsible for their un-traceability.
3. Shri G.S. Yadav, Consultant, Rajasthan State Information Commission suggested that in order to overcome the malaise of mismanagement in record-keeping, it is imperative that the Public Records Acts are brought in sync with Section 4 of the RTI Act.
4. Shri Yadav also suggested that each Government must seriously think in terms of appointing Public Records Officers who shall monitor management of record-keeping

and shall also ensure that records are duly handed over and taken over at the time of transfer, superannuation etc.

THIRD SESSION:

The third session was chaired by Dr. Sheela Priya, Chief Information Commissioner, Tamil Nadu. The subject for discussion was the role of the First Appellate Authorities.

Dr. Sheela Priya, the Chair; Shri S. Chowdhary, Chief Information Commissioner of Rajasthan and Dr. Joram Begi, Chief Information Commissioner of Arunachal Pradesh Information Commission felt that the First Appellate Authorities have either not been discharging their role as per Section 19 of the RTI Act, 2005 or have been grossly indifferent thereto. More often than not, they have been acting as mere rubber-stamps. The other participants too expressed concerns that the levels of the First Appellate Authorities have come down.

A study made by the Rajasthan Information Commission indicated that during a given period, out of the first appeals filed by the appellants, 64% cases were not decided at all, 15% cases were decided within the prescribed time of 30 days or extended time of 45 days whereas the remaining 21% cases were decided much after the prescribed period had expired. In the light of the above revelations, which the house fairly agreed would apply to the other States as well with differences in degree, the house deliberated upon the steps which could be taken to make the First Appellate Authorities as effective as has been envisaged under the Act. In this connection, the following suggestions were made:

1. Shri R.K. Mathur, Chief Information Commissioner of the Central Information Commission suggested that there is urgent need to sensitize the First Appellate Authorities so that they can be activated. If need be, the Appropriate Governments should take steps to incentivize the task of disposal of first appeal.
2. Dr. A.K. Sinha, State Chief Information Commissioner, Bihar Information Commission suggested that it is necessary to extend the prescribed period for disposal of appeal to at least 3 months so that the First Appellate Authorities can do justice to the task assigned to them.
3. Shri S.K. Misra, State Chief Information Commissioner, Odisha Information Commission suggested that even under the existing arrangement, Commissions can think in terms of resorting to Section 19(8)(b) so that erring First Appellate Authorities can be effectively dealt with. This would also send appropriate signals to all concerned.
4. Shri Hanuman Sharan Sharma, Registrar of the Rajasthan State Information Commission too suggested that entry should be made in the APAs of the First Appellate Authorities to indicate their performances in disposal of first appeals.
5. Shri Sharma also suggested that as in the case of the PIOs, rules and procedures must also be prescribed for the First Appellate Authorities for dealing with first appeals.

FOURTH SESSION:

The fourth session was on the subject of “public interest”. This session was chaired by Dr. A.K. Sinha, Chief Information Commissioner of the Bihar Information Commission.

Shri R.K. Rawat, Consultant to the Rajasthan State Information Commission stated in his presentation that although “public interest” has not been defined, the same has nonetheless been discussed in several land-mark legislations. It would therefore be of immense help to draw on such judgements.

In the deliberations that followed, the participants even while agreeing that public interest is prima facie an amorphous concept, it is nonetheless essential that the contours of the concept are clearly understood in order that several landmark decisions including the recent decisions of the Hon'ble Supreme Court in the cases of *Girish Ramchandra Deshpande vs. Central Information Commission* and *Canara Bank as represented by its Deputy General Manager vs. C.S. Shyam* could be effectively followed / implemented.

Shri H.S. Das, Chief Information Commissioner of the Assam Information Commission suggested that public interest has to be decided on a case to case basis and there could possibly be no guidelines in the matter. Even one individual can represent the "public" and therefore the information sought by him could partake the nature of public interest.

Dr. A. K. Sinha expressed that often public interest is sought to be justified by making mere allegations of corruptions without substantiating the same. It was therefore suggested by him that allegations of corruptions ought not to be accepted lightly.

Shri R.K. Mathur, Chief Information Commissioner, Central Information Commission suggested that public interest needs to be construed liberally. He in fact suggested that it is in the interest of the public that maximum information should be disclosed. In this connection, he cited the example of tenders being issued and results published. Every tender case must be made public.

Shri S.K. Misra, Chief Information Commissioner of the Odisha Information Commission suggested that wherever public money is involved, a public interest is also necessarily involved. Further, every Act of a public functionary necessarily involves and leads to a public interest in as much as a public functionary does not deal with a private matter having no nexus with the public sphere. Therefore, he agreed with Shri Mathur that most of the cases where information is sought ought to be seen as involving public interest except the cases which are exempt under Section 8 of the RTI Act, 2005.

Shri Misra also pointed out that in Section 8(1) of the Act, "general public interest" appears only at 3 places viz. 8(1)(d), 8(1)(e) and 8(1)(j). It does not appear elsewhere. Therefore, there is no need to demonstrate the outweighing of protected private interests by the "larger public interest" in relation to any other information except information covered by the aforementioned 3 clauses. The remaining clauses of Section 8 are sufficiently prohibitive. Barring these and also barring "third party information" disclosure of which has been subjected to adherence to a separate procedure, all other information should be treated as eligible for disclosure. This applies to information in Section 8(1)(d)/(e) & (j) too where the Competent Authority is satisfied that larger public interest warrants disclosure of information.

OPEN SESSION:

During the concluding session, the following open discussions were made:

It was felt that harmonization of the working of State Information Commissions can be furthered by adoption of a model computerization program customized for each State working language. This will facilitate adoption of best practices across different States and lead to common understanding and administration of the law.

Commissions must duly exercise the monitoring and reporting function bestowed on them under Section 25 of the Act and make suitable recommendation as would help develop, modernize and reform the regime of the RTI Act, apart from suggesting amendments.

It was suggested by a participant that in view of the decision of the Hon'ble Supreme Court reported in (2016) 3 SCC 417, the RTI Act should be taken as over-riding all other Acts.

Section 18 does not specify the orders to be issued under it. Sections 18, 19 & 20 have also not been clearly and unambiguously worded. It is essential that the Act is appropriately amended to make the scope of these Sections clear.

Appropriate recommendations be made to the Government to amend the Act which would empower the Commissions to execute their orders.

Suo motu disclosure under Section 4(1)(b)/(c) should be made enforceable.

VOTE OF THANKS

The Conference-cum-Workshop concluded with Shri H. S. Das, Chief Information Commissioner of the Assam Information Commission and Vice-President of the Federation thanking all present for their valuable contributions and, in particular, the host Chief Information Commissioner and his team for their great efforts which made the Conference a huge success.

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Epilogue

by Suresh Chowdhary, SCIC Rajasthan

The NFICI Conference and Workshop at Jaipur on 28th - 29th September 2018 saw in depth deliberations on various topics and led to the following understanding on how to strengthen the current RTI Regime:

- 1) Pro-active disclosure of information using information technology is the sine qua non for a robust RTI regime. Public authorities must designate dedicated officers/ PIOs to ensure implementation of the provisions of Section 4 of RTI Act and the concerned department/ministry must regularly monitor this exercise. Annual audit of proactive information disclosure must be mandatory, and every public authority must display such audit reports on its website. State Government should also ensure comprehensive monitoring of proactive information disclosure through a designated nodal State Government department. At the same time, sufficient resources should be made available to field officers for computerization and upkeep of record. Furthermore, State Information Commissions must lay stress on strict compliance of RTI Act Sections 4(1)(a)(b) and 4(2) in their decisions and advisories.
- 2) Transparency must be the absolute standard under the RTI Act. However, harmonization of conflicting interests during disclosure of information as mentioned in the preamble of the RTI Act should be strictly adhered to. Before disclosing any protected information, the test of public interest should be rigorously applied in each matter. Also, repetitive RTI applications, First Appeals and Second Appeals seeking frivolous information could be rejected at the level of PIO/ First Appellate Authority and Second Appellate Authority in view of the aims and objects of the RTI Act, 2005 and as decided by Hon'ble Supreme Court in the case of CBSE Vs. Aditya Bandopadhyay.
- 3) All State Information Commissions are creatures of the same Central Act. It would be appropriate if the various State Governments could also adopt similar Rules based on a model draft prepared centrally. In this, rules and comprehensive procedure must also be framed for the First Appeals. Also, entries in the Annual Performance Appraisal Reports of First Appellate Authorities should be made reflecting their acumen in disposal of First Appeals.
- 4) Harmonization of working of State Information Commissions can be furthered by adoption of a model computerization programme customized for each State's working language. This will facilitate adoption of best practices across different States and lead to common understanding and administration of the law.

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KERALA STATE INFORMATION COMMISSION

Abuse of RTI Act by Individuals

by S. Somanathan Pillai, SIC Kerala

SICs are established under the RTI Act as a statutory authority not merely to hear and decide about disputes arising under the said Act (Ss. 18 and 19) but are bestowed with monitoring and reporting functions (S.25) intended to develop, improve modernize and reform the regime of the right to information by even suggesting amendments to the RTI Act, other legislations, common law or any other matter relevant for operationalising the right to access information (S. 25(3)(g)).

As seen from the Preamble of the RTI Act, the Act itself was made after balancing the requirement of democracy for an informed citizenry and transparency of information to contain corruption and to promote accountability with the conflicting interest of efficient operation of Governments, optimum use of limited finances and preserving confidentiality of sensitive information. This is why the RTI Act which declares the right to information for all citizens provides in Ss. 8, 9, 10 and 11 protection of various classes of information from disclosure. So also S. 7(9) provides that information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or it would be detrimental to the safety or preservation of the record in question.

To me, these provisions provide ample statutory safeguards for the general protection of any public authority. The SIC being creatures of the statute ought not to and cannot question the provisions of the Act. At any rate, the Hon. Supreme Court has time and again held that the mere possibility of abuse of a statute is not a ground to invalidate it. This was done in ever so many cases where citizens pointed out to the court the abuse of certain statutes by Government officials against citizens. The RTI Act is probably one of very few legislations, if not the only one, against which the Government and its functionaries complain of abuse at the hands of citizens. This alone indicates the valuable rights the citizens have acquired against the Government on account of the RTI Act and the SICs should be extremely zealous in safeguarding this right and preventing it being whittled down by the Establishment.

A batch of cases filed by the Kerala Public Service Commission [KPSC] against the SIC, Kerala were referred for consideration to a Division Bench of the Hon. High Court. In the said batch of cases, the KPSC contented that “information” under the RTI Act has to be restricted to such information as would be available under Article 19(1)(a) of the Constitution, that it holds a fiduciary relationship with examiners employed by it and therefore the valued answer sheets cannot be provided under the RTI Act, that the identity of the examiners cannot be disclosed by it, that under its Rules it has prescribed its own charges for granting answer papers taking into consideration the funds at its disposal and its efficient utilization and therefore it should not be compelled to provide information at the rate prescribed under the RTI Act and that KPSC has to in fact incur huge expenses and administrative difficulties including deployment of staff

exclusively to deal with requests for information under the RTI Act and if it is enforced, it would result in undue hardship and clogging of its administrative set up. The Hon. Division Bench repelled all these contentions. It held amongst other issues that on account of S. 22 of the RTI Act, the said Act over rides the internal Rules and Regulations of the KPSC. Fees prescribed by it will have to give way to the fees prescribed under the RTI Act when information is sought under the RTI Act. Similarly, the expenses and managerial issues relating to implementation of the Act cannot be a ground not to implement the RTI Act. The Hon. High Court held "Once a piece of law is in place, inconvenience is no excuse to exclude adherence to it. The bounden is to obey and abide by it. This plea of the KPSC also does not commend acceptance". The judgment of the Hon. High Court is reported in 2011(2) KLT 88: 2011(2) KHC 87.

The KPSC appealed against this judgment to the Hon. Supreme Court. In the judgment reported in (2016) 3 SCC 417 the Hon. Supreme Court expressly upheld the entire judgment of the Hon. High Court except its direction that once the examination process is over, the identity of the examiner should also be revealed if requested under the RTI Act. Therefore, the difficulties faced by every public authority which has to necessarily divert human and fiscal resources to implement the provisions of the RTI Act is no ground to excuse an authority from implementing the Act to its full. If necessary, it is for the public authority to seek additional resources to fulfil its mandate under the RTI Act including the requirement under S. 4(1)(a) to maintain all its records duly catalogued and indexed in the manner and form which facilitates the right to information and ensure that all records that are appropriate to be computerized are so done and connected to the internet so that such records can be accessed from anywhere.

It may also be borne in mind that S. 6(2) provides that an applicant making a request for information shall not be required to give any reason for such request. It is clear that the Legislature did not want any public authority to sit in judgment whether the information requested is relevant to the applicant or not. This is being mandate of the RTI Act it is only in extreme cases of abuse or misuse of the Act that the SICs would be justified in refraining from implementing the provisions of the RTI Act to the fullest extent. If aggrieved, the public authorities are always free to approach the Constitutional Courts and get ameliorative relief which may not be strictly in accordance with law but may serve the ends of justice in particular cases.

I. Effect of Supreme Court Judgment in Manipur Chief Information Commissioner Vs. State of Manipur on Sec.18 of the RTI Act.

One of the areas that require in depth discussion is the effect of the Supreme Court judgment in Manipur Chief Information Commissioner Vs. State of Manipur (2011) 15 SCC in which the Hon. Supreme Court has whittled down S. 18 of the RTI Act and merely a provision under which a penalty up to a maximum of Rs. 25,000/- can be enforced on the defaulting officer or a recommendation can be made to initiate disciplinary proceedings against him and holding that the SICs cannot direct dissemination of information under the said provision. It is true that the provisions of Ss. 18, 19 and 20 of the RTI Act which constitute Chapter V thereof is not clearly and unambiguously worded. While S. 18 grants enormous powers to the Information Commissions including the same power as are vested in civil courts (S.18 (3)), all this is negated

by S. 18 failing to specify the orders that can be issued under it. It appears that the orders that can be issued under Ss. 18 and 19 are together enumerated in S. 19(8) when S. 19(3) deals with Second Appeals to the Information Commissions alone. In Second Appeal, the Commission decides a dispute between two sides. Many of the powers enumerated in S. 19(8) do not contemplate an inter parties dispute alone but are actually more suited in disposing of complaints under S. 18. The Information Commissions may address the Government under S. 25(1)(g) to make appropriate changes in the Legislation to address this lacuna.

II. Execution of the orders of Information Commissions.

While recommending appropriate changes to the RTI Act under S. 25(1)(g) the Government may also be addressed to introduce suitable amendments regarding the execution of the orders of the Information Commissions. In this context, a prayer was made to the Hon. Supreme Court to direct the Hon. High Courts under Article 226 of the Constitution of India to enforce orders of the Information Commissions since the RTI Act does not provide for such enforcement by any means whatsoever. While the Hon. Supreme Court refrained from casting such liability on the Hon. High Courts, in the judgment reported in 2016 (3) KLT SN 123, it has in the absence of any other provisions in the statute, directed State Governments to give effect to the orders of the Information Commissions. An appropriate amendment bestowing Commissions to enforce their orders akin to say, the powers granted to Consumer Disputes Redressal Fora/Commissions may be appropriate in the case of Information Commissions also.

III. Right to Privacy and RTI Act.

A big change has occurred in our constitutional landscape on account of the judgment of the Nine Judge Constitutional Bench Judgment of the Hon Supreme Court in K.S. Puttuswamy Vs. Union of India (2017) 10 SCC 1. By this judgment the Hon. Supreme Court has overruled two other Constitution Bench judgments comprising lower bench strengths to hold emphatically that right to privacy is a part and parcel of the fundamental right of the citizen of India. When the RTI Act was enacted in the year 2005 except for pray two Judge, three Judge Judgment of the Hon. Supreme Court the right to privacy was not recognize as a fundamental right. Now that it has been, various provisions of the RTI Act could be challenged in the Constitutional Courts as being against the said right and hence unconstitutional. So also, when privacy is claimed by an individual against disclosure of particular information pertaining to him even though held by a public authority, the said right is no more one of the factors that are required to be balanced by the statute, the RTI Act. The said right now forms a fundamental right which overrides statutory rights. This has been held so by the Hon. Supreme Court in (2018) 4 SCC 530. Those aspects may be borne in mind when cases come up before the Information Commissions in the future where the right to privacy against disclosure of information is claimed by a citizen.

Jaipur, 28th-29th September 2018

Sharing of Best Practices for Mitigating Problems of Misuse of RTI Act

by U.S. Palawat, Consultant, RSIC

RTI Act, 2005 is a powerful tool enacted to enable any citizen to have access to information under the control of the public authorities, in order to promote transparency and accountability in the working of every public authority. The Act was passed with the purpose of empowering the citizens of our country through Information, having its foundations in democratic values of a Government OF the people, BY the people and FOR the people. It provides an effective framework to ensure smoother, greater and more effective access to information to all citizens. Undoubtedly, the Act has raised awareness amongst people about government functioning and has given them a platform to find answers to their valid concerns which wasn't available before the Act, hence the Act is a huge step towards promoting human rights.

However, in the course of time it has been observed that on one hand this Act has been a facilitator in the working of our Public Authorities by making them more accountable and answerable but at the same time there have been instances wherein the Act has been misused through repeated and/or irrelevant applications. Such applicants in the name of transparency overload the Public Authorities with multiple, repetitive and irrelevant applications wasting valuable time and energy of Public Authorities which in turn is indirectly wastage of public money. Those precious man-hours which could have contributed to the economy through better administration, services and building the nation are instead wasted in the repeated cycle of redundant RTI Applications.

The RTI Act has many a times been misused for vague & voluminous information in the name of transparency and accountability.

A few major issues repeatedly crop up while dealing with such RTI Applications which disrupt the efficacy of the Act:

1. Disorganized Information Seeking:

The purpose of RTI Act as such is to promote transparency and accountability in the system by providing the information IN THE SAME FORM AS IT IS AVAILABLE. Public machinery cannot be exploited in the name of transparency and accountability by seeking information which is random, extensive and scattered.

2. Vague and Futile Information:

It is pertinent for note that any information sought under the Act must serve a purpose either on an individual level or to the society at large. As the law doesn't enquire about the purpose behind acquiring the information, it leaves room for misuse of the Act. Purposeless seeking of information leads to unnecessary harassment and ill use of scarce man-power resources.

3. Voluminous Information:

Applications seeking voluminous information are encountered often wherein applicants have sought information running across hundreds and thousands of papers either out of ignorance or for mischievous objectives.

4. Fake / Bogus Applications:

We also come across fake RTI Applications filed by individuals in the name of their family or friends who reside in different cities, but all the applications have a similar structure, content and handwriting / ink. Since there is no provision in the Act of asking for Identity Proof of RTI applicant, concerned authority can do nothing but waste national resources and incur unnecessary costs in dealing with such bogus applications. This is a major concern since the Act gives an opportunity to miscreants to tie up scarce Resources in filing voluminous information through forged signatures by filing applications in the name of others.

5. Third Party Information:

There are many loopholes in the procedure which need to be plugged so that there is minimal misuse or abuse of the Act by vested interests. There are instances where Third Party Information is sought on the same subject repeatedly; most often these applications are filed by individuals for settling personal scores with their opponents arising out of family disputes, maintenance claims or rivalry; driven by revenge or vengeance.

6. Repeated Applications:

Bombarding the Authorities with repeated applications is an issue to be addressed very sternly because such applications are not only irrelevant but also a depletion of public resources in multiples.

Recently Rajasthan Information Commission received a letter from Commissioner, Nagar Parishad Banswara, Rajasthan mentioning therein that two so called RTI activists had filed 1502 and 781 applications respectively under Sec. 6(1) in RTI Act, most of them making false allegations and calling for various and voluminous information repeatedly.

In a study carried out in Rajasthan State Information Commission, regarding appeals preferred by different categories by the applicants, it has been observed that during the period from January 2010 to August 2016, total 44376 appeals were filed by total 13838 applicants which can be broadly divided in three categories:

1. Regular Appellants (1 to 5 Appeals): 12582 appellants filed 18794 appeals which indicates that above 91% appellants filed about 42% appeals.
2. Persistent Appellants (6 to 50 appeals): 1171 Appellants filed 15161 appeals which indicates that in this category about 8% appellants filed 34% appeals.
3. Dedicated Appellants (51 plus appeals): 85 Appellants filed 10421 appeals which reveal that about 1% appellants filed 23% appeals.

This study clearly indicates that there are three broad categories of information seekers:

- A. Regular information seeker- usually comes forward in a single matter related to personal need for particular information, either in case of "missing record" or "refused" category of SPIO response and easily reconciles to the existing factual or legal circumstance.
- B. Persistent Information seeker- usually files multiple appeals in one or more related matters of grievance redressal and at times seeks to use RTI as a weapon to browbeat target public officials or settle personal grudges.

- C. Dedicated Information Seeker- usually files scores of appeals in numerous disparate matters with view to either social service, or possible self-aggrandizement or even to dominate target SPIO offices for either influence-peddling or downright blackmail and extortion and the latter self-seekers may often outnumber the public spirited ones.

Suggestions for dealing with such inherent inequalities:

1. There is need to encourage the Regulars while discouraging the self-seeking component in the other segments in the interest of actualizing the outcomes of transparency, accountability and efficiency that the RTI Act promises.
2. Public awareness campaigns, strengthening of public grievance redressal mechanisms, infrastructure build-up and proper training to improve human resources could go a long way towards this.
3. The glut of appeals coming from self-seekers could be addressed by prioritizing the scheduling or listing of appeals from the Regulars over the others- one way sometimes suggested for this being the limiting of daily hearings to at most two for any given appellant.

7. *Misuse of BPL card for seeking information:*

Many habitual RTI seekers use another person's BPL card for seeking information and try to get voluminous information free of cost from the Public Authority.

Suggestions:

Moving forward, we suggest a few steps towards mitigation of the problems of repeated and irrelevant applications:

1. Warning: Anytime the Appellate Authority is of the opinion that the applicant is guilty of misusing the act and has caused wastage of public resources, the applicant must be explicitly warned against repetition of such acts in the future. This would send a clear message to the applicant.
2. Upload Judgments Online: Such judgments should be uploaded on the website of the Public Authority so that it acts as a deterrent for the applicants as well all others who visit the website.
3. Standardise norms for prioritization of applications: In the event of multiple applications by the same person or re the same matter, active steps and protocols should be established regarding prioritization of hearings. In order to safeguard the rights and interests of other bona fide information seekers, malicious repeated applications intended to waste valuable time and resources should only be heard once and then re-allocated at the bottom of the priority list to be heard only once after all other new matters have been heard.
4. Establish stricter norms around establishing BPL status and eliminating proxy misuse: There have been growing concerns around misuse of the BPL provisions within the RTI Act. Stricter norms should be adopted regarding proving ones BPL status to avoid misuse. For example, requiring one's name to be on the latest officially issued BPL list or certificate of proof rather than accepting historic ration cards as proof of BPL. Likewise, in the case of lengthy information requests or where the information is not maintained in the requested format, in such cases Rajasthan State Information Commission adopted an innovative method to deal with this problem by issuing directions to the applicants to inspect the record. This inspection order serves three purposes:
 - a. It eliminates proxy information seekers;

- b. Stops seeking repeated information from the Public Authority, and
 - c. Results in saving for the state exchequer by not providing hundreds or thousands of copies of the record for free.
5. Spread Awareness and Educate: Authorities must understand that each successive application must have an additional purpose, mere repetition of the content or request for the same information with a different angle / language classifies as repeated application and must be dealt accordingly. Such repeated applications hamper day to day working of the office and induce an environment of fear amongst all employees. This is a serious concern and steps must be taken to curtail the negative impact which can be done by widely educating all concerned about growing malpractices related to RTI Act. Spreading awareness about the Act and how the Act itself protects the Public Authorities by way of Section 7(9) wherein it clearly states that information is to be provided in the form it is sought UNLESS it would disproportionately divert the resources of the Public Authority. Hence the purpose of RTI is to make the authorities more accountable but not at the cost of sacrificing its core functioning.
6. Provide training: Many hardworking and honest employees are scared of the Act being misused against them for whom Public Authorities should organize Training Programs and educate employees about all provisions of the Act. Well-informed employees are always better equipped to deal with complicated cases and training would also remove a lot of apprehensions they have related to misuse of the Act.
7. Discuss and propagate provisions for punitive action: Several cases in front of various judicial bodies have exposed the underlying need to introduce some sort of punitive measures which could be taken against mala fide applicants, who wish to misuse the RTI Act in a blatant fashion. While this is beyond the scope of authority of Information Commissions, discussions and petitions can be initiated with the appropriate authorities to encourage the legislature to introduce such amendments or bye-laws.

Conclusion:

There is no denial that the Act has helped bona fide information seekers by making our Authorities more vigilant, more responsive and answerable in view of the penal provisions of the Act. It has successfully established a two-way communication channel between the Authorities and Citizens breaking the age-old barrier of non-responsive public authorities.

But the other side of the coin is also a sad reality, where our Authorities are flooded with barrage of unmindful, irrelevant and repeated applications, mostly driven by vengeance and personal vendetta of a few disgruntled elements, who in the name of activism have caused a greater loss to the nation financially as well as morally.

Promoting Pro-active Disclosure / Dissemination of Information

by G.S. Yadav, Consultant, RSIC

The RTI Act has been enacted to provide citizens, access to information under the control of public authorities and thereby promote transparency and accountability in their functioning. The Constitution of India has established democratic republic that requires transparency of information which is vital in the functioning of public authorities and to curtail corruption. The disclosure of information in actual practice is likely to conflict with other public interest including efficient operation of the Government, optimum use of limited fiscal resources and the preservation of the confidentiality of sensitive information. The most important factor which comes under the regime of RTI is to harmonize these conflicting interests while preserving the ideology of democracy.

True legislative intent of proactive or Suo motu disclosure mandate is to promote openness and transparency which is always in public interest. Essence of this provision is that any information of public interest, not covered under exemption must be disclosed clearly and proactively and should be made available in public domain. This is to ensure that there is no need for any request in writing to seek such information by the citizen of the country.

Accountability requires public authorities to justify the information disclosed due to which many of the public authorities restrict themselves from disclosures. This practice which was inherently part of the governance of public authorities runs counter to the very objective of RTI Act, blocking the genuine requirement for information. It has been experienced that in the context of misuse of RTI by an individual, it may require the concerned office to provide information related to numerous questions as a result of which smooth functioning of public authorities is impacted.

To harmonize the public interest, efficient operation of the Government and optimum use of limited fiscal resources and to restrict misuse of the RTI, the section 4 of the RTI Act requires public authorities to proactively disclose, disseminate and publish information of general public interest widely without it being requested or demanded by the public. This is called suo motu disclosure / proactive disclosure. It is mandatory in nature and it is laid down in section 4.

RTI Act has very comprehensive proactive disclosure provision under section 4, especially section 4(1) (b) of the RTI Act which lays down a list of 17 categories of information that has to be proactively disclosed by all public authorities. Under section 4(1) (a) obligation has been cast upon the Public Authority to maintain all its record duly catalogued and indexed in a manner and form which facilitates the RTI under this Act. It ensures that all records that are appropriate to be computerized be so done within reasonable time, subject to availability of resources. Such computerized information is required to be connected through a network all over the country so that access to such information and record is facilitated.

Further Section 4(2) of the Act mentions that - it shall be a constant endeavour of every Public Authority to take steps in accordance with the requirements of Clause (b) of Sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communication, including internet, so that the public have minimum resort to the use of this Act to obtain information.

Record Management

1. In the States in general and Rajasthan in particular, infrastructure for record management seems far from satisfactory. Record rooms are ill maintained which in many cases has led to the loss of records due to fire commonly caused by electrical short-circuit, flood and frequent transfer of office building. Maintenance of important record from among the stacks of stored information is the responsibility of the officers who take occasional interest in such things. The problems in record management are attributable to the absence of Public Record Act. Had there been a Public Record Officer in all Public Offices it would have been his responsibility to ensure proper record keeping that is vital for providing information. No conscious efforts to modernize record keeping or management have been seriously taken. As a result, absence or loss of records even in important matters is quite common.

- i. On the pretext of missing of files or non-availability of the records, SPIOs are frequently resorting to denial of information which raises a major concern in the proper application RTI.
- ii. In the situation of superannuation or transfer of officials the absence of proper handing and taking over of records has also contributed in mismanagement of record keeping.

To overcome the above problems, Public Record Act and section 4 of RTI Act need to be implemented in letter and spirit by the Public Authorities.

Through compliance of section 4 of the RTI Act the Government and its instrumentalities are excepted to disclose maximum and leave less scope for citizen to have to resort to use of the RTI Act. This intent is reflected in section 4. The law makers wanted less use of this law by establishing transparent Governance. It is for the Government to establish transparency in Governance. It was intended that most of the information frequently requested under RTI be disclosed under section 4. Section 4 (1) says every public authority “shall” but the word “shall” does not work because it is subject to the availability of resources. This breach cannot be questioned or complained against. The wording of the provision gives an impression that the law is a recommendation only. Though certain aspects of this section were to be mandatorily applied by the public authority within 120 days, of the enactment, but nothing can be done if it has not been complied with. As per sub section 4 (1) (b) (c) (d) of the Act the public authority “shall” disclose information mandatorily, but the violation thereof results in the consequence that a citizen cannot make use of this law to ensure good Governance as even this mandatorily, provision is being translated as a recommendation only. This gap in good governance is glaringly visible.

Even after more than 13 years have passed since the enactment of the Act, there are several examples of public authorities that have not published even the basic information expressly specified in section 4 (1) (b) of the Act. Under this section 17-point information was required to be furnished within 120 days of enactment of this Act.

In the present scheme of the Right to Information Act 2005 section 4, obligation has been cast upon the Public Authority maintain all its record duly catalogued and indexed in a manner to ensure that all appropriate records are computerized within a reasonable time and connected through a network such that it facilitates the access of information from any part of the country. The provision is of course subject to availability of resources.

Section 4 is the most formidable part of the RTI Act which can give access to immediate information, and usher in transparency and accountability.

In *Canara Bank vs. Central Information Commission* (2008 (2) Civ. LJ 420) Hon'ble court observed that - "The obligations mentioned under this section have to be mandatorily performed by the public Authority suo motu without any request from anybody."

Further, in the matter of *State Consumer Disputes Redressal Commission Vs. Uttarakhand State Information Commission* (AIR 2009 UTR 55 at p.61) the Hon'ble court observed - "The Public Authority has to give most of the information suo motu. The information has to be periodically updated by various means of communications, including internet so that the public should have minimum resort to the use of this for obtaining information."

Section 4 is a very important section in this Act, but all concerned, including Information Commissions have not insisted on implementation of this section. As per this section, it is mandatory for a public Authority to proactively disclose information on 17 subjects and it is a continuous process to update information. RTI Act came into effect on October 12, 2005 and then time limit of 120 days was set for Public Authorities to implement section 4 of the Act. But even till today, the section is not implemented comprehensively by most of the Public Authorities.

The section 4 does not provide any provision to fix responsibility on any officer of Public Authority in case of non-compliance. In the context of, *Delhi Development Authority vs. Central Information Commissioner* and other cases, the Delhi High Court observed that section 4 merely sets out the obligations of the public authorities but does not provide any mechanism to enforce the implementation of these obligations.

The weak implementation of Section 4 of the Right to Information Act is partly due to the fact that certain provisions of this act have not been fully detailed.

Therefore, to address, the issue following steps need to be taken:

1. Section 4(1) (a) & (b) and 4(2) to be strictly monitored by the Information Commissions.
2. Public Authorities should make the obligations mentioned in section 4, an integral part of their organizational functioning.
3. Timely auditing of pro- active disclosure is a must for the Public Authority, but it is not being done till now. It should be made mandatory for every Public Authority and audit report must be put up for public disclosure.
4. A comprehensive proactive monitoring and enforcement mechanism needs to be set-up to ensure compliance of section 4 of the Act.
5. A dedicated officer/Public Information Officer must be designated to implement the provisions of Section 4 of the Act, and this exercise must be part of regular monitoring of Department /Ministry.
6. Enough resources should be made available to the field offices for computerization and up keep of record.

Jaipur, 28th-29th September 2018

Strengthening the Role of First Appellate Authority

by Hanuman Sharan Sharma, Registrar & OSD, RSIC

Right to information is treated as a facet of the fundamental rights guaranteed under Article 19 and 21 of the Constitution of India. The Right to Information Act, 2005 is not simply a repository of the right to information, it safeguards the constitutional rights guaranteed under Article 19(1)(a) of the Indian Constitution. The Right to Information Act, 2005 is merely an instrument that lays down statutory procedure in the exercise of these rights.

The Right to Information (RTI) Act, 2005 is citizen centric in nature, it empowers individual citizens – no matter how low or high in their station of life – to seek real time and legally accurate information from the Public Authorities in a time bound manner. Even a citizen living below the poverty line, minor or insane can make use of this Act because of easy practicality of the procedure involved.

The Right to Information Act, 2005 has given India the second freedom where a citizen is now much more empowered than even a Parliamentarian at least in getting information from the government. For a written parliamentary question, a parliamentarian gets just one chance to get a reply from the government. While, on the other hand, an RTI petitioner has two subsequent chances on filing first appeal and second appeal to grill the government, if he/she is not satisfied with the initial response coming from the government.

Independent appeal mechanism is another unique feature of RTI Act, 2005. Section 19 of the RTI Act, 2005 provides provisions of two appeals- the first appeal within the Public Authority and the second appeal with the Information Commission. First appeal system i.e. filing appeal before the Public Authority is time saving and resource saving disputes resolution mechanism, where an information seeker can easily enforce his valuable right.

Section 19(1) of this Act provides for the designation of an appellate authority at the Public Authority level who is an official senior in rank to the Public Information Officer.

There are multiple reasons why the RTI Act, 2005 contain a provision of review of the decision of Public Information Officer within the Public Authority level:

1. The Public Authority must have the opportunity to correct any erroneous decision of its Public Information Officer, so that matters may be resolved quickly within the Public Authority.
2. It enables quicker resolution of information access disputes – between information seeker and the Public Information Officer.
3. If the First Appellate Authority is able to resolve the disputes internally, the burden on Information Commission will reduce considerably.

In spite of above positive features of the First Appeal system, it has some weaknesses which are impeding its effective implementation:

1. The First Appellate Authorities under the RTI Act do not dispose- off the appeals within the time frame prescribed by the Act.

2. The First Appellate Authorities do not examine the appeals judiciously and either they express their agreement with the decision of the Public Information Officer mechanically, or issue stencil orders, such as – “give information as per rules or as per record”.
3. In numerous cases the Public Information Officers do not comply with the directions of the First Appellate Authority to furnish information to the appellant, and Appellant is compelled to file second appeal before the Information Commission.
4. All these acts or omissions of the FAAs frustrate the very purpose of this sunshine act.

Before analyzing the above issues, it is necessary to have a look at legal provisions of the RTI Act, 2005.

Section 19(6) of the RTI Act provides that-

1. The FAA should dispose of the appeal within thirty days of the receipt of the appeal.
2. In exceptional case, the appellate authority may take forty-five days to dispose of the appeal subject to the condition that he shall record in writing the reasons for delay in deciding the appeal.
3. After forty-five days the FAA becomes functus officio (official /officer who has no legal authority to decide because his duties and functions have been completed).

A right to appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right.

Deciding appeals under the RTI Act is a quasi-judicial function. The adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of audi alteram partem means no one should be condemned unheard. Notice is the first limb of this principle. Hearing the parties, application of mind and recording the detailed, speaking and reasoned decision are the basic elements of natural justice. It is, therefore, necessary that the appellate authority should see to it that justice is not only done but also appears to have been done.

While deciding an appeal, if an appellate authority comes to a conclusion that the appellant should be supplied information in addition to what has been supplied by the Public information officer, he may either (i) pass an order directing the Public Information Officer to give such information to the appellant or he himself may give information to the appellant while disposing off the appeal from his own file.

The Act provides that the FAA would be an officer senior in rank to the Public Information Officer. Thus, the FAA would be an officer in commanding position vis-a-vis the Public Information Officer. If, in any case, the Public Information Officer does not implement the orders passed by the FAA and the FAA feels that intervention of higher authority is required to get his order implemented, he can bring the matter to the notice of the officer in the Public Authority competent to take action against the Public Information Officer.

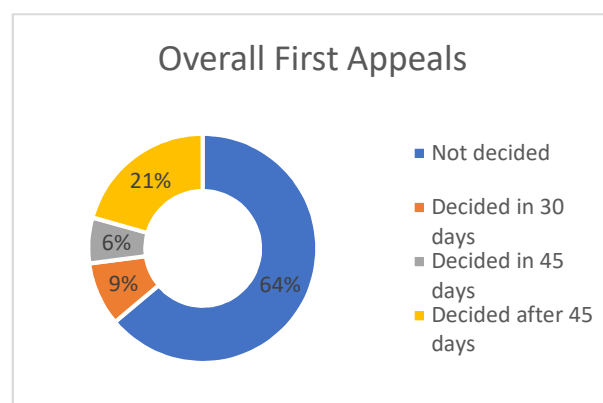
Above mentioned legal position clearly states that the FAA has full competence to hear and decide first appeals and also to implement its own decision.

A study was conducted in the Rajasthan State Information Commission about the functioning / working of the FAA. The Rajasthan State Information Commission decided about thirteen thousand second appeals from January 2017 to December 2017. A random sample of these files was taken and 1235 decided second appeals were taken for analysis. The study revealed:

Type of Public Authority	First Appeals Lodged	Not Decided at all	Decided in 30 Days	Decided in 45 Days	Decided after 45 Days
Government Departments	760	494	75	52	139
Panchayati Raj Institutions	244	187	06	03	48
Local Bodies	140	58	17	15	50
Public Undertakings	91	50	13	10	18
Total	1235	789	111	80	255
(in %age)	100%	63.93%	8.99%	6.48%	20.66%

Overall, the figures are:

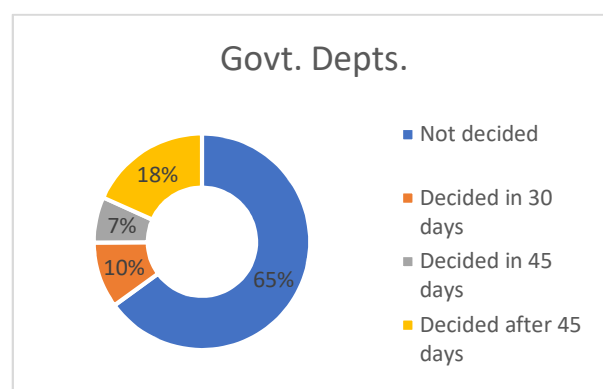
Overall First Appeals	1235
Not decided	789
Decided in 30 days	111
Decided in 45 days	80
Decided after 45 days	255



This clearly indicates that only 15.47% (8.99+6.48) of the first appeals were decided by the FAAs in stipulated time and the basic purpose of designating FAA within the Public Authority is being frustrated.

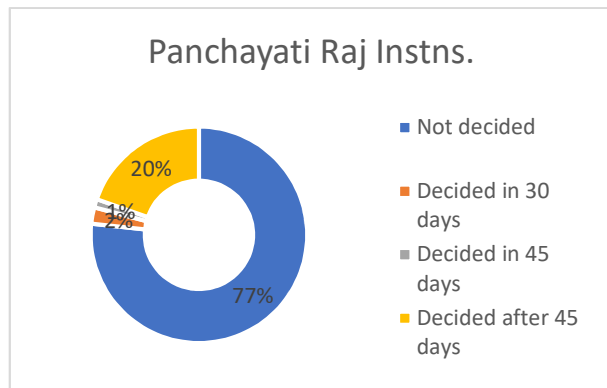
The position of Government Departments is as under:

Govt. Depts.	760
Not decided	494
Decided in 30 days	75
Decided in 45 days	52
Decided after 45 days	139



The position of Panchayati Raj Institutions is as under:

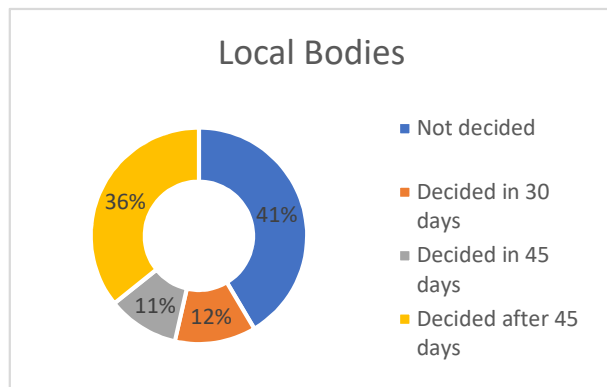
Panchayati Raj Instns.	244
Not decided	187
Decided in 30 days	6
Decided in 45 days	3
Decided after 45 days	48



FAAs in the PRIs are elected representatives (Sarpanch, Pradhan, Zila Pramukh).

The position of Local Bodies is as under:

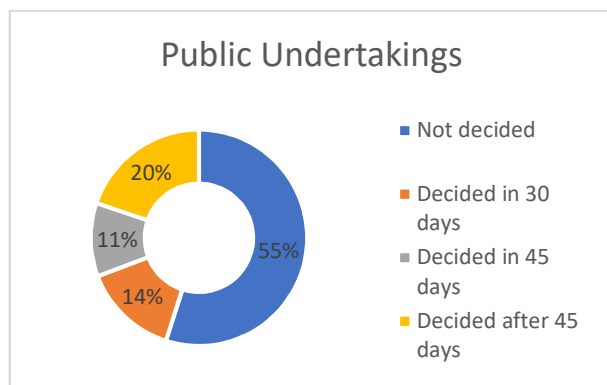
Local Bodies	140
Not decided	58
Decided in 30 days	17
Decided in 45 days	15
Decided after 45 days	50



FAAs in the Local Bodies are elected representatives (Chairman, Mayor).

The position of Public Undertakings is as under:

Public Undertakings	91
Not decided	50
Decided in 30 days	13
Decided in 45 days	10
Decided after 45 days	18



Our analysis clearly indicates that the FAAs are not functioning as per the mandate of the RTI Act.

	FAA Type	% FA undisposed	% FA disposed after 45 days
1	Govt. Departments	64.00%	28.13%
2	Public Undertakings	54.95%	19.78%
3	Panchayati Raj Institutions	76.73%	19.67%
4	Local Bodies	41.76%	37.97%

Alternate categorization of the FAA

We could classify the FAA into two basic categories:

- a) Elected representatives of the public, and
- b) Government officers.

Elected representatives of the public

There are two categories of elected representative viz-

1. Rural i.e. Panchayati Raj Institutions consisting of Panchayats, (9896) Panchayat Samities, (295) and Zila Parishads (33,); and
2. Urban i.e. Local Bodies consisting of Nagar Nigams, (7), Nagar Palikas (149), and Nagar Parishads (34).

FAA's in Rural & Urban Institutions being public elected members, there may be the following reasons for inactions in deciding First Appeals:

1. They may do not want to indulge in official work, as some of them are not well educated.
2. They may not have adequate knowledge of RTI Act 2005.
3. They may be under the pressure or aura of the public information officers.
4. As they are elected members, they may do not want to annoy any public member, so they do not decide the matter in any way.

Government officers:

In Government Departments and Public Undertakings, FAAs are Government Officers, but here as shown in above table the position of non-disposal of FA is alarming. It might be due to heavy work load, touring-duty or other reasons. But certainly, the situation requires further studies to clarify the matter. More so as various instructions issued by central government and state government clearly indicate that the FAA is nothing but yet another Public Information Officer, "senior in rank to the Public Information Officer" within the public authority.

Some reasons for non-disposal of FA in time:

1. No rules for procedure to deal with first appeals have been prescribed by the government as has been done for the second appeals before the Information Commission.
2. The RTI Act is silent about the powers and functions of FAA.
3. The RTI Act does not fix any role and responsibility on the FAA.
4. The FAA is not subordinate to the Information Commission.

Suggestions:

1. To overcome the above situation following steps are necessary:
2. The lack of clarity about the powers and functions of the FAA needs to be corrected for efficient and effective implementation of the Act.
3. Rules and procedure must be framed for deciding first appeal.
4. Government should issue necessary instructions for timely disposal of first appeals.
5. A punitive clause is necessary for delinquent FAAs, especially for government officers in the RTI Act.
6. An incentive should also be initiated for those FAAs, who dispose off First Appeals in due time with due diligence.
7. Especially, for government officers an entry in their APARs should be made reflecting their acumen in disposal of First Appeals.
8. Training / refresher course is must for FAAs for their efficient discharge of duties mandated under the RTI Act.

Understanding the Concept of “Public Interest” with respect to RTI Act, 2005

by R.K. Rawat, Consultant, RSIC

The Right to Information Act, 2005 (RTI ACT) is a move to replace a culture of secrecy and control in Public Authorities with one of openness, transparency and participation. The RTI Act has undoubtedly contributed to growing acceptance of sense of accountability towards people of the country. This seems to be positive beginning of the transition to true democracy.

The basic objects of the RTI Act are to empower the citizens, promote transparency and accountability in the working of the government, contain corruption, and make our democracy work for the people in the real sense. An informed citizenry will be better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed.

The preamble of the RTI Act states-

“...AND WHEREAS revelation of information in actual practice is likely to conflict with other public interest including efficient operations of the government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information.

AND WHEREAS it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal.”

In RTI Act, 2005 providing information is the rule and denial an exception but the preamble permits non-disclosure of information that is likely to cause conflict with public interests including-

1. Efficient functioning of the government;
2. Optimum use of limited fiscal resources; and
3. Preservation of confidentiality of sensitive information.

The Hon’ble Supreme court in the matter of District Registrar Vs. Canara Bank (AIR 2005 SC 186) reiterated that-

“there may be circumstance when information sought by the applicant under section 6 of the RTI Act, 2005 may be refused in larger public interest of the society.”

In the matter of Union Public Service Commission Etc. Vs. Angesh Kumar and others (Civil Appeal No (s) 6159-6162 of 2013 decided on 20th Feb. 2018) Hon’ble supreme court observed-

“(10) Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in civil services examination cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing.

Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest.”

Right to Information is the law where the exemption is only the exceptions.

Further Section 8 of the RTI Act exempts some class of information from disclosure.

Sub-section (1) of Section 8 of the RTI Act mentions a list of ten clauses, clause (a) to (j) listing there from exemptions provided by the parliament.

Sub-section (2) of section 8 of the RTI Act mentions-

“(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a Public Authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”

Statutory exemption provided under section 8 of the RTI Act is the rule and only in exceptional circumstances of larger public interest the information would be disclosed.

There is absolute bar on disclosure in six out of ten exceptions namely-clauses (a),(b),(c),(f),(g) and (h) of Section 8 (1). The public information officer has been left with no option except to refuse to divulge information in respect of subjects covered by those six clauses. So far as, the rest of the subjects covered by clauses (d), (e) and (j) of Section 8(1) of the RTI Act are concerned, The Public Information Officers have to record findings after assessing the comparative weight of the public interest and the protected interest . If public interest outweighs protected interest, then information has to be divulged otherwise the officer would record refusal to divulge (AIR 2009 P & H 14)

It is pertinent to mention here that the term “Public interest” has not been defined in the RTI Act. To understand the real meaning of Public Interest, we can take assistance of some significant judgements of the Hon’ble Supreme Court.

1. Babu Ram Verma Vs. State of Uttar Pradesh (1971) IILLJ 235 All) The Hon’ble Supreme Court in this judgment has interpreted the expression “public interest” to mean an act beneficial to general public and an action taken for public purpose. However, it stated that it is impossible to define what ‘public purpose’ is as it differs from case to case. In each case, facts and circumstances would have to be examined in order to determine whether the information fulfils public interest or public purpose.

2. In S.P. Gupta Vs. President of India (AIR 1982 SC 149) Justice Bhagwati, in referring to public interest, maintained

“Redressing public injury, enforcing public duty, protecting social, collective, ‘diffused’ rights and interests vindicate public interest... (in the enforcement of which) the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

3. In State of Gujarat vs. Mirzapur Moti Kureshi Kasab Jamat & others (AIR 2006 SC 212) the Apex court held-

“the interest of general public (public interest) is of a wide importance covering public order, public health, public security, morals, economic welfare of the community, and the objects mentioned in Part IV of the Constitution (i.e. Directive Principles of the state policy).”

4. In Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi ((2012) 13 SCC 61) Hon’ble Supreme court observed-

“22. The expression Public interest has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression public interest must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression “public interest”, like “public purpose”, is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. It also means the general welfare of the public that warrants recognition and protection; something in which the public as whole has a stake.”

5. Central Information Commission in its decision No. CIC/OK/A/2006/00046 dated 02.05.2006 also throws some light on this term. ‘Public interest’ includes, “disclosure of information that leads towards greater transparency and accountability” in the working of the Public Authority.

In the above-mentioned decisions, it has been held that the expression “public interest”, like “public purpose” is not capable of any precise definition. However, it has been held that Public purpose needs to be interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information and the decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision.

It seems that the term “public interest” is deliberately not defined in the RTI Act. Because of this, especially, Public Information Officers, Appellate Authorities and Information Commissioners will need to judge each case on its merits and in the light of any emerging guidance or best practices of other Commissions. What is held to be in the public interest will change over time and it will depend on the particular circumstances of each case. Consideration of the public interest is to be made on a case-by-case basis.

The Public Interest Test:

The public interest test involves three steps:

1. Identify the relevant public interest considerations in favour of disclosure.
2. Identify the relevant public interest considerations against disclosure.
3. Determine the weight of the public interest considerations in favour and against disclosure and where the balance between those interests lies.

The main factors counting against the disclosure of information are those which are mentioned in section 8 (1) exemptions themselves. For instance, there is an obvious public interest in national defence, maintaining good international relations and law enforcement. If disclosure would adversely affect these matters, then it is relevant to consider the exemptions, although the possible adverse effect of disclosure still needs to be weighed against the positive benefits of openness.

When applying the public interest override in section 8 (2) of RTI Act, the Public Information Officer, Appellate Authorities or Commissions should exercise their discretion as far as possible to facilitate and promote the disclosure of information, in accordance with the objective of the RTI Act.

Factors to Decide the Public interest:

In the matter of R.K. Jain vs. Union of India ((1993) 4 SCC 120) Hon’ble Supreme court observed as-

“54. The factors to decide the public interest immunity would include (a) where the contents of the documents are relied upon, the interests affected by their disclosure; (b) where the class of documents is invoked, whether the public interest immunity for the class is said to protect; (C) the extent to which the interests referred to have become attenuated by the passage of time or the occurrence of intervening events since the matters contained in the documents themselves came into existence; (d) the seriousness of the issues in relation to which production is sought; (e) the likelihood that production of the document will affect the outcome of the case; (f) the likelihood of injustice if the documents are produced...”

In practice, the Public Information Officer should identify – in writing - all public interest considerations favouring disclosure or non-disclosure of a particular matter. Identifying public interest factors in a general way is not enough. The public Authority must be satisfied that the disclosure of the particular information would lead some harm or benefit to the particular public interest factor before it becomes relevant.

Hon’ble Supreme court in the matter of Bihar Public Service Commission Vs. Saiyid Hussain Abbas Rizvi ((2012) 13 SCC 61) observed:

“23. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision.”

Hon’ble Supreme court in the matter of Girish Ramchandra Deshpande Vs. Central Information Commission & ors. (SLP (CO NO. 27734 of 2012 dated 3.10.2012) held as under:

“13. of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.”

The Delhi High Court in its decision UPSC vs. R.K. Jain (W.P. (C) 1243 of 2011) dated 13.07.2012 while discussing on the issue of disclosure of information in larger public interest, held as under:

“The second half of the first part of clause (j) of section 8 (1) shows that when personal information in respect of a person is sought, the authority concerned shall weigh the competing claims i.e., the claim for the protection of personal information of the concerned person on the one hand, and the claim of public interest on the other, and if “public interest” justifies disclosure, i.e. the public interest outweighs the need for protection of personal information, the concerned authority shall disclose the information.”

The comparative strength / importance of the public interest issues identified must therefore, be weighed against each other to decide whether or not those favouring disclosure outweigh those favouring non-disclosure. The extent of the harm or benefit will influence the weight to be given to the factor.

When a Public Authority finally decides to rely on an exemption to withhold disclosure, the RTI Act requires that they must provide their reasons to the applicant. These reasons should explain how the public interest override was considered and applied. A detailed record of decision-making process should be kept at every step when considering exemptions, so that if the applicant requests a review or subsequently appeals to the Commission for a decision, there is a

clear record of the arguments considered regarding public interest test. This will also help the applicant to understand how the decision was made.

Public Authorities must be able to provide evidence of the factors that were taken into consideration when the public interest test was applied to any exemption they cited. It will not be enough simply to list all the factors they thought were contrary to the public interest. Instead, Public information Officer should provide all the public interest factors both for and against disclosure, which were taken into account in applying the test. They must be able to show that a specific detriment would occur because of the disclosure of the required information.

Conclusion:

- 1) Restriction from disclosure of information mentioned in the Preamble of the Act should be strictly adhered.
- 2) Before disclosing the information, the test of public interest should be applied in each matter.
- 3) Before disclosing the desired information, a comparison of harm and benefit should be objectively considered and it must be shown that a specific detriment would occur because of the disclosure of the required information.
- 4) Such information should be disclosed that leads towards transparency and accountability of the public authority.

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(यजुर्वेद)

अर्थात्
यह जानकारी मैं जन-जन को दूँगा,
क्योंकि यही हितकारी होगा।



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