

# THE RIGHT TO INFORMATION ACT, 2005

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 21st June, 2005/Jyaistha 31, 1927 (Saka)

The following Act of Parliament received the assent of the President on the 15th June, 2005, and is hereby published for general information :-

## THE RIGHT TO INFORMATION ACT, 2005 (22 of 2005)

[15th June 2005]

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

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

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows :-

### CHAPTER-I

#### PRELIMINARY

1. (1) This Act may be called the Right to Information Act, 2005.  
(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) The provisions of sub-section (1) of section 4, sub-sections (1) and (2) of section 5, sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.

2. In this Act, unless the context otherwise requires, -

(a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly -

(i) by the Central Government or the Union territory administration, the Central Government;

(ii) by the State Government, the State Government;

(b) "Central Information Commission" means the Central Information Commission constituted under sub-section (1) of section 12;

(c) "Central Public Information Officer" means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5;

(d) "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12;

(e) "competent authority" means -

(i) the Speaker in the case of the House of the people or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;

(ii) the Chief Justice of India in the case of the Supreme Court;

(iii) the Chief Justice of the High Court in the case of a High Court;

(iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;

(v) the administrator appointed under article 239 of the Constitution;

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

(g) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

(h) "public authority" means any authority or body or institution of self-government established or constituted -

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any-

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;

(i) "record" includes -

(a) any document, manuscript and file;

(b) any microfilm, microfiche and facsimile copy of a document;

(c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(d) any other material produced by a computer or any other device;

(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to -

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

(k) "State Information Commission" means the State Information Commission constituted under sub-section (1) of section 15;

(l) "State Chief Information Commissioner" and "State Information Commissioner" mean the State Chief Information Commissioner and the State Information commissioner appointed under sub-section (3) of section 15;

(m) "State Public Information Officer" means the State Public Information Officer designated under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5;

(n) "third party" means a person other than the citizen making a request for information and includes a public authority.

**CHAPTER - II**  
**RIGHT TO INFORMATION AND OBLIGATIONS OF**  
**PUBLIC AUTHORITIES**

3. Subject to provisions of this Act, all citizens shall have the Right to Information.

4. (1) Every public authority shall -

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated;

(b) publish within one hundred and twenty days from the enactment of this Act, -

(i) the particulars of its organization, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorizations granted by it;

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) the names, designations and other particulars of the Public Information Officers;

(xvii) such other information as may be prescribed and thereafter update these publications every year;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) 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 communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

**Explanation** - For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

**5. (1)** Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(2) Without prejudice to the provisions of sub-section(1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section(1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section(4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

6. (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to-

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request can not be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,-

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

7.(1) Subject to the proviso to sub-section(2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on

receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section(1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving -

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section(5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,-

- (i) the reasons for such rejection;
- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the appellate authority.

(9) An 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 would be detrimental to the safety or preservation of the record in question.

8.(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, –

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate



authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secretes Act, 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.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

**9.** Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

**10.(1)** Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

(2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing -

(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) the name and designation of the person giving the decision;

(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission

or the State Information Commission, as the case may be, time limit, process and any other form of access.

**11.(1)** Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

### **CHAPTER - III**

#### **THE CENTRAL INFORMATION COMMISSION**

**12.(1)** The Central Government shall, by notification in the official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Central Information Commission shall consist of—

- (a) the Chief Information Commissioner; and
- (b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The Chief Information Commissioner and the Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of –

- (i) the Prime Minister, who shall be the Chairperson of the Committee;
- (ii) the Leader of Opposition in the Lok Sabha; and
- (iii) a Union Cabinet Minister to be nominated by the Prime Minister.

**Explanation:** For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the house of the people has not been recognized as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

**13.(1)** The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

(3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

(5) The salaries and allowances payable to and other terms and conditions of service of -

(a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;

(b) an Information Commissioner shall be the same as that of an Election Commissioner:

Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

**14.** (1) Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be, -

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

(4) If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

#### CHAPTER - IV

#### THE STATE INFORMATION COMMISSION

**15.** (1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the..... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

**Explanation :** For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognized as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The Headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

**16. (1)** The state Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:

Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15:

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

(3) The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.

(5) The salaries and allowances payable to and other terms and conditions of service of –

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

**17.** (1) Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner

in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be, –

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

(4) If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

## CHAPTER - V

### POWERS AND FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL AND PENALTIES

**18.** (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,-

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;



(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

**19.** (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellants was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provide that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to -

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including –

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

**20.** (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

## CHAPTER - VI

### MISCELLANEOUS

**21.** No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

**22.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

**23.** No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

**24.(1)** 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.

(2) The Central Government may, by notification in the Official Gazette, amend the Scheduled by including therein any other intelligence or security organization established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organization shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organization being organizations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

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 State 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.

(5) Every Notification issued under sub-section (4) shall be laid before the State Legislature.

**25. (1)** The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during the year and forward a copy thereof to the appropriate Government.

(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(3) Each report shall state in respect of the year to which the report relates,-

(a) the number of requests made to each public authority;

(b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;

(c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;

(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

(e) the amount of charges collected by each public authority under this Act;

(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

(g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernization, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House.

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

**26.(1)** The appropriate Government may, to the extent of availability of financial and other resources, -

(a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;

(b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;

(c) promote timely and effective dissemination of accurate information by public authorities about their activities; and

(d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

(2) The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

(3) The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include -

(a) the objects of this Act;

(b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (1) of Section 5;

(c) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;

(d) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;

(e) the assistance available from the Central Information Commission or State Information Commission, as the case may be;

(f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;

(g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;

(h) the notices regarding fees to be paid in relation to requests for access to an information;  
and

(i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

(4) The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

**27.(1)** The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(b) the fee payable under sub-section (1) of section 6;

(c) the fee payable under sub-section (1) and (5) of section 7;

(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;

(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and

(f) any other matter which is required to be, or may be, prescribed.

**28. (1)** The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(ii) the fee payable under sub-section (1) of section 6;

(iii) the fee payable under sub-section (1) of section 7; and

(iv) any other matter which is required to be, or may be, prescribed.

**29. (1)** Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

**30. (1)** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

**31.** The Freedom of Information Act, 2002 is hereby repealed.

**THE FIRST SCHEDULE**

*[See sections 13(3) and 16(3)]*

FORM OF  
OATH OR AFFIRMATION TO BE MADE BY THE CHIEF INFORMATION  
COMMISSIONER/THE INFORMATION COMMISSIONER/THE STATE CHIEF  
INFORMATION COMMISSIONER/  
THE STATE INFORMATION COMMISSIONER

"I, ....., having been appointed Chief Information Commissioner/Information Commissioner/State Chief Information Commissioner/State Information Commissioner swear in the name of God that I will bear true faith and allegiance solemnly affirm

to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

**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. Special Branch (CID), Andaman and Nicobar.
17. The Crime Branch-C.I.D.-CB, Dadra and Nagar Haveli.
18. Special Branch, Lakshadweep Police.
- \*\* 19. Special Protection Group
- \*\* 20. Defence Research & Development Organisation
- \*\* 21. Border Road Development Board
- \*\* 22. Financial Intelligence Unit, India

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\* Substituted vide GSR 347 dt.28.9.2005

\*\* Added vide GSR 347 dt. 28.9.2005

### **E-INFORMATION SYSTEM OF ORISSA INFORMATION COMMISSION INAUGURATED**

In a bid to facilitate easy access for citizens preferring Second Appeals/Complaints under Right to Information Act, 2005, the Orissa Information Commission has put in place an e-Information System with effect from 1.11.06 with the help of the National Informatics Centre. While ensuring faster and easy disposal of Complaints/ Second Appeals, this system will help create a supporting system for citizens remaining in far off places to get benefits as envisaged in the RTI Act in a more convenient and comfortable manner.

Inaugurating this e-Information system of the Orissa Information Commission, Sri D.N.Padhi, Hon'ble State Chief Information Commissioner underlined the imperative need to use information technology extensively for efficient and effective functioning of any progressive organization. Referring particularly to Orissa Information Commission Hon'ble State Chief Information Commissioner revealed that expeditious steps are being taken to improve the functioning of the Orissa Information Commission both in legal as well as administrative sides. He further added that the State Commission has received a record number of Complaints/ Second Appeals within a short span of 11 months and maximum number of cases have been disposed off. The State Information Commission has also taken time bound action in evolving appropriate strategy to mount an information campaign to create awareness among the citizens on the Right to Information Act, 2005. With the operation of this e-Information system, citizens will receive faster, quicker and cheaper services without compromising on the quality in the decision making process of the State Commission as mandated in the RTI Act.

Among others Prof. Radhamohan, State Information Commissioner, Sri A.K. Sahu, Secretary to the Commission, Sri B. Khadenga, Registrar, Sri S.K. Panda, Senior Technical Director, NIC, Dr. R.N. Behera, Technical Director, NIC were also present.

# ORISSA RIGHT TO INFORMATION RULES, 2005

GOVERNMENT OF ORISSA  
INFORMATION & PUBLIC RELATIONS DEPARTMENT

## NOTIFICATION

**The 1st October, 2005**

No.27163/I&PR. In exercise of the power conferred by Section 27 of the Right to Information Act (No.22 of 2005), the State Government do hereby make the following rules, namely: -

**1. Short title and commencement.** - (1) These rules may be called the Orissa Right to Information Rules, 2005. (2) They shall come into force on the date of their publication in the Orissa Gazette.

**2. Definitions.** - (1) In these rules, unless there is anything repugnant in the subject or context -

- (a) 'Act' means the Right to Information Act, 2005 (No. 22 of 2005);
- (b) 'BPL Card' means a card issued to any citizen who is below the poverty line;
- (c) 'fee' means amount payable by the applicant for obtaining any information under the provisions of sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 excluding the cost of providing information;
- (d) 'form' means a form appended to these rules;
- (e) 'identity' means an evidence to show the citizenship like an electoral photo identity card, a passport or any other document which can satisfy the authority about the citizenship of the person;
- (f) 'Nodal Officer' means the Commissioner-cum-Secretary to Government, Information & Public Relations Department;
- (g) 'Public Information Officer' means the State Public Information Officer designated under sub-section (1) of section 5 of the Act and includes an Assistant Public Information Officer designated as such under sub-section (2) thereof;
- (h) 'Schedule' means a Schedule appended to these rules; and
- (i) 'State Government' means the Government of Orissa

(2) Words and expressions used but not defined in these rules shall have the meaning as assigned to them in the Act.

### **3. Appointment & Obligations of Public Information Officers.-**

(1) A public authority, if it is a department of State Government, shall designate as many officers as it deem proper, not below the rank of Under Secretary as Public Information Officers.

(2) In each sub-ordinate office of the Department of Government including the Heads of Department and offices in the district and Sub-divisional level the head of such offices shall designate as many officers as they deem proper as Public Information Officers and Assistant Public Information Officers.

(3) Every public authority other than those mentioned in sub-rules (1) and (2) of the said rule 3 shall designate one or more Public Information Officers in all administrative units and offices under such authority:

Provided that every such public authority shall, while designating such officers as Public Information Officers so designated, ensure that an officer higher in rank to Public Information Officer, is available to be specified as Appellate Authority.

(4) If, for any reason beyond the control of Public Information Officer furnishing of information is delayed, he shall record reasons with justification thereof and shall communicate the Head of the office about such delay.

**4. Procedure to obtain information.** - (1) A citizen desirous of any information may apply for information in form A to the Public Information Officer, with the required fee in shape of Treasury Challan or cash as specified in the Schedule under the appropriate head of Account:

Provided that application fee shall not be payable in case of a person whose name appears in the latest list of persons below poverty line for which he has to produce BPL Card.

Provided that a citizen seeking information through electronic means has to submit evidence regarding deposit of prescribed application fee.

(2) The Public Information Officer or any other officer authorized by him shall furnish the acknowledgement and after being satisfied with the identity of the applicant shall also intimate in form B as soon as possible the amount of cost for providing information required to be paid by the applicant in cash, as mentioned in the Schedule.

(3) The applicant may deposit the said amount within a period of fifteen days from the date of receipt of such information, failing which the application shall stand rejected.

**5. Information regarding rejection.** - (1) Where a request has been rejected under sub-section (1) of section 7, the Public Information Officer shall intimate the applicant, the reasons for such rejection in form C.

(2) Wherever information applied for is available in electronic means, the Public Information Officer may advise in form C to the applicant to obtain the information from the appropriate website to be specified by the Public Information Officer.

**6. Meeting of the recommending Committee.** - For the purpose of appointment of the State Chief Information Commissioner and the State Information Commissioner under sub-section (3) of section 15, the Nodal Officer shall, in consultation with the State Government, convene the meeting of the Committee for their recommendation.

**7. Memorandum of appeal.** - (1) An appeal under sub-section

(1) of section 19 shall be filed in form D to the officer as designated by the Public Authority to hear such appeal.

(2) The Memorandum of appeal shall be accompanied with such fee as specified in the Schedule which shall be paid in the shape of court fee stamp.

(3) Any person aggrieved by the decision under sub-section (1) of section 19, may prefer a second appeal before the State Information Commission under sub-section (3) thereof in form E which shall be accompanied with such fee in the shape of court fee stamp as specified in the Schedule.

(4) The appeal preferred under sub-rules (1) and (3), if not accompanied with the required fee, shall be rejected by the concerned Appellate Authority, but no fee is payable by the applicant holding a BPL Card.

(5) Every order of the Appellate Authority shall be communicated to the appellant concerned and to the Public Information Officer where such appeal is from the order of the Public Information Officer and to the first Appellate Authority in case it is a second appeal.

**8. Guidelines by the State Government.** - The State Government shall have the power to issue guidelines not inconsistent with the provisions of the Act and these rules for smooth implementation of the provisions of the Act and the rules.

**9. Penalties.** - In the event of imposition of penalty under section 20 on the Public Information Officer concerned, such penalty may be deposited by the said officer by Treasury Challan under the appropriate receipt Head of the State Budget within a period of thirty days, failing which the amount shall be recovered from the salary of the officer concerned.

**10. Calculation of cost of damage.** - If any damage is caused to the public property in the course of giving any information in the form of samples of materials, the damage caused to such property shall be included while calculating further fees representing the cost of providing the information.

**11. Maintenance of Register.** - (1) The Public Information Officer shall maintain a register in form F for recording the details of the applications received and the information supplied by him and keep the Head of Office informed after furnishing any information and it shall be the duty of the Head of Office to ensure required assistance if any, as would be sought for by the Public Information Officer to facilitate providing information.

(2) The Public Information Officer shall maintain a cash register in form G for recording the details of money received by him relating to providing information and deposit the money in such head of account or in any Scheduled Bank in the name of such officer as the concerned Head of Office decides.

**12. Deposit of expenditure.** - The expenditure to be incurred for production of witness or documents before the State Information Commission shall be deposited before the Commission by the party at whose instance the witnesses or the documents are to be produced.

**13. Realisation of penalties or damages.** - Any penalty or damage or any other sum payable under the Act, if not paid within thirty days of the date of receipt of the order for realization of the same or cannot be recovered, can be realized from such person as arrears of land revenue.

By Order of Governor

Sd/-

(Digambar Mohanty)

Commissioner-cum-Secretary to Govt.

**FORM - A**

***See Rule - 4 (I)***

Application for Information under section 6 (1) of the Act

To

The Public Information Officer  
(Name of the office with address)

1. Full name of the applicant
2. Name of the Father / Husband
3. Permanent address
4. Particulars in respect of Identity of the applicant
5. Particulars of information solicited
  - (a) Subject matter of information
  - (b) The period to which the information relates
  - (c) Specific details of information required
  - (d) Whether information is to be sent by post or received in person  
(The actual postal charges shall be included in providing information)
  - (e) In case by post (ordinary, registered or speed)
6. Address to which information will be sent & in which form
7. Has the information been provided earlier ?
8. Is this information not made available by the Public authority ?

9. Do you agree to pay the required fee ?  
10. Have you deposited application fee ?  
(If yes, please indicate details of such deposit)  
11. Whether belongs to BPL category, have you furnished the proof of the same ?

Place \_\_\_\_\_ Full Signature of the applicant

Date \_\_\_\_\_ Address

**Office of the Public Information Officer**

Received the application from \_\_\_\_\_  
\_\_\_\_\_ address \_\_\_\_\_  
\_\_\_\_\_ on \_\_\_\_\_ seeking  
information.

Place : \_\_\_\_\_ Full name of Public Information Officer

Date : \_\_\_\_\_ Designation & Seal

**FORM B**

[See Rule 4 (2) ]

Information for Payment

From  
Name & Designation of the Public Information Officer

To  
Name of the applicant -  
Address

Sir,

Please refer to your application dated \_\_\_\_\_ addressed to the undersigned requesting information on \_\_\_\_\_. I am to inform you that the following amount towards cost for providing information may be deposited in cash, to enable the undersigned to furnish information sought for.

Please make payment within a period of fifteen days from the date of receipt of this intimation failing which the application shall be rejected.

Fee \_\_\_\_\_

Yours faithfully

Place: \_\_\_\_\_ Public Information Officer

Date: \_\_\_\_\_ Seal

**FORM C**

[See Rule 5 (1) and (2) ]

Intimation of rejection

Sir,

The undersigned regrets to express his inability to furnish the information asked for on account of the following reasons-

- (i) It comes under the exempted category covered under sections 8 and 9 of the Act.
- (ii) Your application was not complete in all respect.
- (iii) Your identity is not satisfactory.
- (iv) The information is contained in published material available to Public.
- (v) You did not pay the required cost for providing information within the prescribed time.
- (vi) The information sought for is prohibited as per section 24 (4) of the Act.
- (vii) The information would cause unwarranted invasion of the privacy of any person.
- (viii) The information as sought for by you is available in our Website \_\_\_\_\_  
\_\_\_\_\_ you may download the information.
- (ix) For any other reason, please see overleaf.

However, if you feel aggrieved for the above said refusal you may file an appeal before the ..... within 30 days of the receipt of this letter.

Place:

Name & Designation of

Date:

Public Relations Officer

To

Sri \_\_\_\_\_  
\_\_\_\_\_

**FORM - D**

[*See Rule - 7 (1)*]

Form of Memorandum of Appeal to the first Appellate Authority under Section 19 (1) of the Act  
From

\_\_\_\_\_  
(Applicant's Name & address)

Before

**The First Appellate Authority**

1. Full name of the Appellant :
2. Address :
3. Particulars of Public Information Officer :
4. Date of receipt of the order appealed against :
5. Last date for filing the appeal :
6. Particulars of information :
  - (a) Nature and subject matter of the information required :
  - (b) Name of the office or Department to which the information relates :
7. The grounds for appeal :  
(Details, if any, to be enclosed in separate sheet)

**Verification**

I, \_\_\_\_\_ Name of the appellant, son / daughter / wife of  
\_\_\_\_\_ hereby declare that the particulars furnished in the  
appeal are to the best of my knowledge and belief, true and correct and that I have not suppressed any  
material fact.

Signature of the Appellant

Place :

Date :

To

\_\_\_\_\_  
**Name and address of Appellate Authority**



**FORM - E**

[See Rule 7 (3)]

Second Appeal under Section 19 (3) of the Act

From

\_\_\_\_\_  
(Applicant's Name & address)

To

The Orissa Information Commission

1. Full name of the Appellant :
  2. Address :
  3. Particulars of the first Appellate Authority :
  4. Date of receipt of the order appealed against :
  5. Last date for filing the appeal :
  6. Particulars of information
    - (a) Nature of subject matter of the information required :
    - (b) Name of the office or Department to which the information relates :
  7. The grounds for appeal :
- (Details of items to be enclosed in separate sheets)

***Verification***

I, \_\_\_\_\_ (Name of the appellant, son / daughter / wife of \_\_\_\_\_) hereby declare that the particulars furnished in the appeal are to the best of my knowledge and belief, true and correct and that I have not suppressed any material fact.

Signature of the Appellant

Place :

Date :

To

**Orissa Information Commission,  
Bhubaneswar, Orissa.**

**FORM - F**

[See Rule 11 (1)]

**FORMAT FOR THE INFORMATION REGISTER**

Sl. No	Date of application	Name of the person requiring the information	Address of the person	Nature of information	Whether all formalities have been complied by the person requiring the information	Name of the authority which the information are to be collected	Date on which the information shall be supplied	Date on which the authority/authorities concerned requested to supply the required information	No & date of reminder issued	Date on which the information are received by the P.I.O from the authority/authorities concerned	Date of supply of information to the person concerned requiring the information	Reasons in brief for not supplying information	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14

**FORM G**

[See Rule 11 (2)]

**CASH REGISTER**

Sl. No.	Name & Address of the Applicant	Date of application	Date of deposit of amount	Particulars of fee/ with Challan /Cash	Refund, if any	Remarks
1	2	3	4	5	6	7

**Schedule**

(See Rules 4 and 7)

Fees / Amount to be charged for providing information

**PART - I**

(A) Application fee	Rate to be charged	Mode of deposit
(i) Application fee seeking information	Rupees twenty per Application	Treasury Challan/ cash
(ii) Application fee for 1st Appeal	Rupees forty	Court fee stamp
(iii) Application fee for 2nd Appeal	Rupees fifty	Court fee stamp

**PART - II**

(B) Amount to be charged for Providing information

(i) Inspection of documents	Rupees fifteen per each	By cash
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	hour or fraction thereof	
(ii) A4 size paper for each folio		
(a) Typed copy/photocopy per page	Rupees five	By cash
(b) Print out from computer per page	Rupees ten	By cash
(iii) CD with cover	Rupees one hundred	By cash
	per CD	
(iv) Floppy Diskette (1.44MB)	Rupees one hundred	By cash
	per Floppy	
(v) Maps & Plans	Reasonable cost to be	By cash
	fixed by P.I.O. depending	
	upon the cost of labour,	
	material, equipment and	
	other ancillary expenses	
(vi) Video Cassette/Microfilm/Microfiche	- do-	By cash
(vii) Certified sample of material	-do-	By cash

N.B:- Proper and authenticated money receipt to be issued for all cash deposit. The office is to state the cash receipt No. on the application Form 'A'. "

### **OMC SHIPMENT OFFICE AT PARADEEP GETS ISO CERTIFICATION**

The OMC Shipment Office at Paradeep has been ISO Certified recently. The OMC Shipment Office at Paradeep is the 3rd functional unit of OMC after Daitari Iron Ore Project and Chrome Ore Benefication Plant at South Kaliapani to be ISO certified.

The Quality Management System as enshrined in the 9001 : 2000 standards for the material handling system by Paradeep Shipment Office will certainly boost OMC's fortunes which has already created a niche for itself as a 3-star Export House and has bagged the Capaxil Export Award for its consistent export performance.

The OMC shipment Office at Paradeep was assessed by M/s NQAQSR Certification Private Limited, a Delhi based Certification Agency conforming to ISO 9001 : 2000 Standards. At present, OMC's chromite mines of South Kaliapani (one of the largest Mechanised Chromite Mines of Asia) has also initiated steps for getting ISO certification. The ISO certification exercise undertaken by OMC redeems the commitment of the Corporation for adhering to quality standards.

# ORISSA RIGHT TO INFORMATION (AMENDMENT) RULES, 2006.

## NOTIFICATION

The 29th May 2006

S. R. O. No.251/2006 - In exercise of the powers conferred by Section 27 of the Right to Information Act, 2005 (Act No.22 of 2005), the State Government do hereby make the following rules, to amend the Orissa Right to Information Rules, 2005, namely:-

1. Short title and commencement -

- (1) These rules may be called the Orissa Right to Information (Amendment) Rules, 2006.
- (2) They shall come into force on the date of their publication in the Orissa Gazette.

2. In the Orissa Right to Information Rules, 2005 for rule 11, the following rule shall be substituted, namely:-

### **"11. Maintenance of Register-**

(1) The Public Information Officer shall maintain a register in Form F for recording the details of the applications received and the information supplied by him and keep the Head of Office informed after furnishing any information and it shall be the duty of the Head of Office to ensure required assistance if any, as would be sought for by the Public Information Officer to facilitate providing information and the said Register shall remain always open to inspection by the members of public as required in respect of the proactive disclosures under Section 4 (1b) of the Act.

(2) Each public authority shall maintain a Register for day-to-day record of the members of public who visit its office in connection with accessing or inspecting suo motto information proactively disclosed by the said authority under Section 4 of the Act.

(3) The Public Information Officer shall maintain a cash register in Form G for recording the details of money received by him relating to providing information and deposit the money in such Head of Account or in any Scheduled Bank in the name of such officer as the concerned Head of Office decides."

3. In the said rules, in Form - A,  
 (i) for the entries appearing against item 5, the following shall be substituted namely:-  
 "(d) Whether information is required by post/in person/E-Mail  
 (The actual postal charges shall be included in providing information)"; and  
 (ii) for item 6, alongwith the entries made, thereof the following shall be substituted, namely:-  
 "6 Address/E-mail ID to which information will be sent & in which form".
4. In the said rules, the existing Schedule shall be substituted by the following, namely:-

Schedule

(See Rules 4 and 7)

Fees / Amount to be charged for providing information

PART - I

(A) Application fee

	Rate to be charged (1)	Mode of deposit (2)
(i) Application fee seeking information	Rupees ten per Application	Treasury Challan/ cash
(ii) Application fee for 1st Appeal	Rupees twenty	Court fee stamp
(iii) Application fee for 2nd Appeal	Rupees twenty-five	Court fee stamp

PART - II

(B) Amount to be charged for Providing information :

(i) A4 or A3 size paper created or copied	Rupees two per each folio	By cash
(ii) Paper size larger than A4 or A3	Actual charge or cost price of a copy	By cash
(iii) Inspection of records	No fee for the first hour & Rs.5.00 for each 15 minutes (or fraction thereof) thereafter.	By cash
(iv) CD with cover	Rupees 50/- per CD	By cash

(v) Floppy Diskette (1.44MB)	Rupees 50/- per Floppy	By cash
(vi) Maps & Plans	Reasonable cost to be fixed by P.I.O. depending upon the cost of labour and material and equipment and other ancillary expenses	By cash
(vii) Video Cassette/Microfilm/Microfiche	Reasonable cost to be fixed by P.I.O. depending upon the cost of labour and material and equipment and other ancillary expenses	By cash
(viii) Certified sample or model of material	Actual cost or price for sample or models	By cash
(ix) Information in printed form	Price fixed for such publication	By cash

N.B:- Proper and authenticated money receipt to be issued for all cash payment. The office is to state the cash receipt No. on the application Form 'A' . "

Note - The Principal rules were published in the Gazette of Orissa vide I & P.R. Department Notification No.27163, dated the 1st October 2005 [S.R.O. No.477/2005, dated the 1st October 2005].

[No.16076]

By order of the Governor

(D.MOHANTY)

Commissioner -cum-Secretary to Government

# OPERATIONAL GUIDELINES FOR IMPLEMENTATION OF RIGHT TO INFORMATION ACT, 2005

No.PC-100/2005-29062/IPR  
Bhubaneswar, the 28th October, 2005

To  
All Secretaries.

Sub: Formulation of operational guidelines for implementation of "Right to Information Act, 2005".

Madam/Sir,

Inviting a reference to the letter No. 27308/I & P. R dated 05.10.2005 in which copies of Orissa Right to Information Rules, 2005 have been sent to all the Department, it is presumed that all officers must have got themselves acquainted with the various provisions of the Rules. Meanwhile the operational guidelines have been framed as per the provision of clause 8 of the Rule & are given below which are to be scrupulously adhered to by all Public Authorities, P.I.Os & Departmental Appellate Authorities. These instructions should be brought to the notice of all concerned officers under your administrative control.

1. All PIOs are expected to receive application fees either in shape of Treasury Challan or in cash. The PIO shall give separate money receipt to the applicant for depositing the application fees in cash and amount towards cost for providing information in the form appended to at Annexure - 'A'.
2. PIOs are required to open a subsidiary Cash Register and Cash Book as prescribed in form appended to as Annexure - 'B'.
3. The PIOs shall open a Zero Invest Bank A/c in his designation in the nearest scheduled Bank and deposit the total amount received towards application fees in cash as well as amount towards cost for providing information in a day in the Bank account in the very next day.
4. The amount received towards application fees in cash during the month and deposited in the Bank A/c shall be calculated at the end of the month. The amount so calculated shall be deposited through treasury chalan in the Treasury in the receipt head of A/c in the 1st week of the succeeding month. The receipt Head of A/c is "0070-Other Administrative Services-60-Other Services-118-Receipt under Right to Information Act, 2005-0014-Collection of Fees and Fines-02178-Fees and Fines under Right to Information Act, 2005". The treasury chalan shall accompany with a cheque issued against the deposit of the Bank A/c of the concerned P.I.O.

5. Standard procedures for maintaining cashbook may be followed. Two pages of the cashbook facing each other will reflect the receipts on one side and the expenditure on the other.
6. PIOs shall weekly verify the Bank A/c and Cash Book regarding the correctness of transaction of money between Cash Book and Bank Account.
7. All receipts and expenditure should be reflected in the cash book, with full particulars.
8. The Information Register in form 'F' of the Rules maintained by the PIO should be placed before the Head of Office at least once in a month for his perusal. However he may ask to peruse the Register as and when he feels necessary.
9. If the information is not available with the Public Information Officer and has to be brought from other Officer with whom it is available the Public Information Officer should immediately send a copy of the request to the concerned Officer with the request to furnish the information expeditiously.
10. The Public Authority/Head of Office shall consider to create a cell to deal with these matters and ensure that the Public Information Officer of his Office gets all assistance to discharge his duties properly. All logistic support along with the manpower should be placed at his disposal for smooth discharge of his assignment. The initial expenditure shall be provided by the Head of Office which will be reimbursed by the P.I.O. subsequently from the receipt deposits.
11. All the orders passed in the file by the Public Information Officer either providing the information or rejecting the application must be clear, unambiguous and self-explanatory.
12. On receipt of the application a file has to be opened and entered in the file Register as prescribed in the Orissa Record Manual.
13. The Public Information Officer will be the custodian of these records and on his transfer he will handover the charge to his successor. The Public Information Officer and his successor will sign in the Register as token of handing over and taking over of the charges.
14. The file movement Register has to be carefully maintained so that the information can be made available at a given point of time.
15. (a) The name of Public Information Officer & Appellate Authority of Public Authority needs to be published as provided in the Right to Information Act, 2005.  
(b) The following information will be prominently displayed in front of the Office of Public Information Officer at various level of different administrative units under control of each Department.
  - (i) Name & Designation of Public Information Officer
  - (ii) Name & Designation of Appellate Authority.
16. Top priority should be given for suo-motu dissemination of maximum information in order to reduce the number of information seekers.
17. Each Departmental Appellate Authority will maintain a Register in the following proforma.
  - (a) Sl. No. of Appeal
  - (b) Name of the Appellant.
  - (c) Date of Receipt of the appeal
  - (d) Amount of Court fee attached
  - (e) Date of providing opportunity to the requester.
  - (f) Due date of disposal
  - (g) Final date of disposal



(h) Reason for delay, if any.

Further guidelines will be issued from time to time depending upon the experience gained & the difficulties encountered.

Yours faithfully,

Sd/-  
CHIEF SECRETARY

Annexure - 'A'

**ରସିଦ ବହି  
(Receipt Book)**

ବହି ନଂ : ..... କ୍ରମିକ ସଂ. ....  
ତା.....୨୦୦

Received from .....ରୁ  
towards ..... ବାବଦକୁ  
Rs.....ଟଙ୍କା .....(Paisa) ପଇସା ପତ୍ର  
ଗ୍ରହଣ କରି ଓ .....ରେ ଜମା ହେଲା ।

*ଅଧିକାରୀଙ୍କର ସ୍ୱାକ୍ଷର ଓ ପଦନାମ*  
Signature of the Office and Designation

Annexure - 'B'

2. **CASH BOOK / Receipt**

Name & Address of the Applicant Source of the receipt	Date of Receipt of amount	Particulars of Fee/ Challan/ BD/Cash	Remarks
1	2	3	4

**Expenditure**

Date	Amount deposited in Govt. Treasury/Bank/Refund to applicant	T.C. No. & Date	Remarks
1	2	3	4

# ORISSA INFORMATION COMMISSION (APPEAL PROCEDURE) RULES, 2006

## INFORMATION & PUBLIC RELATIONS DEPARTMENT NOTIFICATION

The 6th March 2006

S.R.O. No. 91/2006—In exercise of the powers conferred by clause (e) of sub-section (2) of Section 27 of the Right to Information Act, 2005 (22 of 2005), the State Government do hereby make the following rules, namely :-

### 1. Short title and commencement

- (1) These rules may be called the Orissa Information Commission (Appeal Procedure) Rules, 2006.
- (2) They shall come into force on the date of their publication in the Orissa Gazette.

### 2. Definitions

- (1) In these rules, unless the context otherwise requires, -
  - (a) "Act" means the Right to Information Act, 2005 (22 of 2005);
  - (b) "Calendar year" means the year commencing on the 1st day of January;
  - (c) "Commission" means the Orissa Information Commission, Orissa;
  - (d) "Form" means the Form annexed to these rules;
  - (e) "Registrar" means Registrar of the Commission and any other officer duly authorised by the State Chief Information Commissioner; and
  - (f) "Section" means section of the Act.
- (2) The words and expressions used herein and not defined but defined in the Act, shall have the meanings respectively assigned to them in the Act.

### 3. Procedure for presentation and scrutiny of appeal

- (1) The memorandum of appeal shall be presented, in Form E of the Orissa Right to Information Rules, 2005, by the appellant in person or by his authorised representative to the Registrar to receive

memorandum of appeal or sent by registered post, with acknowledgement due, addressed to the Registrar.

(2) On presentation of every memorandum of appeal, the same shall be registered in the register maintained for the purpose and shall be assigned consecutive serial number of the register during every calendar year.

(3) If the memorandum of appeal, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the applicant such time to rectify the defect as he may deem fit.

(4) If the appellant fails to rectify the defect within the time allowed under sub-rule (3), the Registrar shall, immediately place the matter before the Commission for orders.

#### **4. Contents of appeal**

An appeal to the Commission shall contain the following informations, namely : -

- (i) name and address of the appellant;
- (ii) particulars of the Public Information Officer;
- (iii) date of receipt of the order appealed against;
- (iv) last date for filing the appeal;
- (v) particulars of information -
  - (a) nature and subject matter of the information required,
  - (b) name of the officer or department to which the information relates;
- (vi) the grounds of appeal (details, if any, to be enclosed in separate sheet); and
- (vii) verification by the appellant.

#### **5. Documents to accompany appeal**

Every memorandum of appeal made to the Commission shall be accompanied by the following documents, namely

- (a) self-attested copies of the orders or documents against which the appeal is preferred;
- (b) copies of documents relied upon by the appellant and referred to in the appeal;
- (c) an index of the documents referred to in the appeal; and
- (d) self-addressed duly stamped envelope for intimation of defects in case the memorandum of appeal is sent by registered post.

#### **6. Procedure for presentation, and other matters relating to complaint**

(1) Every complaint made under sub-section (1) of section 18 containing following particulars shall be presented by the complainant in person or by his authorized representative to the Registrar to receive the complaint or sent by registered post, with acknowledgement due, addressed to the Registrar :-

- (a) the name and address of the complainant;

- (b) the name and address of the officer or officers against whom complaint is made;
- (c) the facts relating to complaint and when and where it arose;
- (d) document, if any, as are necessary to prove the allegation made in the complaint petition; and
- (e) the relief sought for.

(2) On presentation of every complaint the same shall be registered in the register separately maintained for the purpose and shall be assigned consecutive serial numbers of the register during every calendar year.

(3) After the complaint is being duly registered, the Registrar shall immediately place the matter before the Commission for orders.

(4) After the Commission is *prima facie* satisfied that there are reasonable grounds to enquire into the matters, it may admit the complaint and direct for initiation of an enquiry in respect of such complaint:

Provided that the Commission shall not reject the complaint unless a reasonable opportunity of being heard is given to the complainant.

#### **7. Procedure in deciding appeal or complaint**

- (1) In deciding the appeal or complaint, as the case may be, the Commission may -
  - (a) take oral or written evidence on oath or affidavit from concerned or interested person;
  - (b) peruse or inspect documents, public records or copies thereof;
  - (c) inquire through authorised officer further details of facts;
  - (d) hear State Public Information Officer who decided the first appeal, or such person against whom the complaint is made, as the case may be;
  - (e) hear third party; and
  - (f) receive evidence on affidavits from State Public information Officer, State Assistant Public Information Officer, such Senior Officer who decided the first appeal, such person against whom the complaint lies or the third party.

(2) The officer appointed under clause (c) of sub-rule (1) (hereinafter referred to as authorised officer) shall be deemed to be a Commission within the meaning of Order XXVI of the Code of Civil Procedure, 1908 and subject to such directions and instructions as may be imposed by the Commission in the order of appointment shall have all such powers, as are exercisable by a Commission appointed under the said Code of Civil Procedure, for the purpose of inquiry.

(3) The order of appointment of authorised officer shall be issued in Form A and shall contain the nature and subject of inquiry as may be specified therein.

(4) The authorised officer shall complete the inquiry as expeditiously as possible and submit his report to the Commission within such period as specified in the order of the Commission appointing the authorised officer:

Provided that the Commission shall having regard to the provisions contained in subsection (6) of Section 19 specify the period for submission of such report by the authorised officer.

#### **8. Service of notice by Commission**

Notice to be issued by the Commission may be served in any of the following modes, namely:-

- (a) service by the party itself;
- (b) by hand delivery (dasti) through Process Server; or person or otherwise through concerned Tahasildar;
- (c) by registered post with acknowledgement due;
- (d) by Speed Post;
- (e) by such courier services as are approved by the Commission; or
- (f) through Head of Office or Department.

#### **9. Personal presence of the appellant or complainant**

(1) The appellant or the complainant, as the case may be, shall in every case be informed of the date of hearing in Form B at least seven clear days before that date.

(2) The appellant or the complainant, as the case may be, may at his discretion at the time of hearing of the appeal or complaint by the Commission be present in person or through his duly authorised representative or may opt not to be present.

(3) Where the Commission is satisfied that the circumstances exist due to which the appellant or complainant is being prevented from attending the hearing of the Commission, then the Commission may afford the appellant or the complainant as the case may be, another opportunity of being heard before a final decision is taken or take any other action as it may deem fit.

(4) The appellant or the complainant, as the case may be, may seek the assistance of any person in the process of appeal or complaint while presenting his points and the person representing him may not be a legal practitioner.

(5) The State Chief Information Commissioner may decide which appeal shall be heard and disposed of by him, or by the State Information Commissioner alone or by both jointly.

#### **10. Decision of the Commission**

The Commission shall pronounce its decision in open proceedings and the certified copy of such decision or any order shall be authenticated by Registrar.

#### **11. Communication of the decision**

Every decision or order of the Commission, as the case may be, on an appeal or complaint shall be communicated to the appellant or to the complainant and to the State Public Information Officer and such Senior Officer to whom the decision or order relates, either through person concerned or by registered post free of cost or through electronic mail.

**FORM A**

**Order of appointment of authorised officer**

[Under clause (c) of sub-rule (1) of Rule 7]

No.

Before the Orissa Information Commission, .

.....No..... of 20.....

Name .....Complainant / Appellant

Whereas it has been found necessary to order an inquiry in this case under the provisions of the Right to Information Act, 2005 (22 of 2005) the following order is issued for the purpose of inquiry.

1. This enquiry directed by the Commission (1) .....

.....  
.....

2. This case before this Commission is for .....

.....

3. The (2) .....alleges, inter alia, that .....

4. The point which requires to be elucidated and ascertained by inquiry is .....

.....  
.....

It is therefore, ordered that Shri .....is appointed as authorised officer for the purpose of an inquiry into this matter.

5. The authorised officer is directed and instructed .....

.....  
.....

6. The authorised officer is directed to submit his report, together with the evidence recorded by him, and any other papers forming the record of his enquiry on or before the .....

.....

7. The parties are directed to appear before the authorised officer on .....  
at.....

By order of the Commission  
Signature  
Office  
Date

**FORM B**

**Notice to appellant / complainant of the day fixed for Hearing of the Appeal / Complaint**

[See sub-rule(1)of Rule 9]

Before the Orissa Information Commission,

Name ..... Appellant / Complainant Appeal  
from the ..... of the first appellate authority Dated the ..... day of .....  
20 ..... / Name and address of the officer (s) against whom complaint is made.

To

Take notice that an appeal from the order ..... / the complaint has been  
presented by you ..... and registered in this Commission and that the .....  
day of .....20 ..... has been fixed by this Commission for hearing  
of this appeal / complaint.

If no appearances is made on your behalf by yourself, through your duly authorised  
representative to act for you in this appeal, it will be heard and decided in your absence.

Given under the seal of the Commission, this day. .... of 20 .....

By Order of the Commission  
Signature  
Office

**N. B.:** Strike out whichever is not applicable.

[No.7307-I. & P.R.]  
By order of the Governor  
D. MOHANTY  
Commissioner-cum-Secretary to Government

## FREQUENTLY ASKED QUESTIONS ON RIGHT TO INFORMATION ACT, 2005

1. When does it come into force ?
2. Who is covered ?
3. What does information mean ?
4. What does Right to Information mean ?
5. What are the obligations of public authority ?
6. What is not open to disclosure ?
7. Is partial disclosure allowed ?
8. What does a “public authority” mean ?
9. Who is excluded ?
10. Who are ‘Third Parties’ ?
11. Who are Public Information Officers (PIOs) ?
12. What are the duties of a PIO ?
13. What is the Application Procedure for requesting information ?
14. What is the time limit to get the information ?
15. What is the fee ?
16. What could be the ground for rejection ?
17. Who are the Appellate Authorities ?
18. How is Central Information Commission constituted ?
19. What is the eligibility criteria and what is the process of appointment of CIC/IC ?
20. What is the term of office and other service conditions of CIC ?
21. What is the term of office and other service conditions of IC ?
22. How is the State Information Commission constituted ?



23. What is the eligibility criterion and what is the process of appointment of State Chief Information Commissioner/State Information Commissioners ?
24. What are the powers and functions of Information Commissions ?
25. What is the reporting procedure ?
26. What are the penalty provisions ?
27. What is the jurisdiction of courts ?
28. What is the role of Central/State Governments ?
29. Who has the Rule making power ?
30. Who has the power to deal with the difficulties while implementing this act ?

**1. When does it come into force ?**

It comes into force on the 12th October, 2005 (120th day of its enactment on 15th June, 2005). Some provisions have come into force with immediate effect viz. obligations of public authorities [S.4(1)], designation of Public Information Officers and Assistant Public Information Officers[S.5(1) and 5(2)], constitution of Central Information Commission (S.12 and 13), constitution of State Information Commission (S.15 and 16), non-applicability of the Act to Intelligence and Security Organizations (S.24) and power to make rules to carry out the provisions of the Act (S.27 and 28).

**2. Who is covered ?**

The Act extends to the whole of India except the State of Jammu and Kashmir. [S.1(2)]

**3. What does information mean ?**

Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force but does not include "file notings" [S.2(f)].

**4. What does Right to Information mean ?**

It includes the right to -

- inspect works, documents, records.
- take notes, extracts or certified copies of documents or records.
- take certified samples of material.
- obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.[S.2(j)]

**5. What are the obligations of public authority ?**

It shall publish within one hundred and twenty days of the enactment:-

- the particulars of its organization, functions and duties;
- the powers and duties of its officers and employees;
- the procedure followed in its decision making process, including channels of supervision and accountability;
- the norms set by it for the discharge of its functions;
- the rules, regulations, instructions, manuals and records used by its employees for discharging its functions;
- a statement of the categories of the documents held by it or under its control;
- the particulars of any arrangement that exists for consultation with, or representation by the members of the public, in relation to the formulation of policy or implementation thereof;
- a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meetings of these are open to the public, or the minutes' of such meetings are accessible to the public;
- a directory of its officers and employees;
- the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- the manner of execution of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
- particulars of recipients of concessions, permits or authorizations granted by it;
- details of the information available to, or held by it, reduced in an electronic form;
- the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- the names, designations and other particulars of the Public Information Officers. [S.4(1)(b)]

#### 6. What is not open to disclosure ?

The following is exempt from disclosure [S.8]

- information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence
- information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- information including commercial confidence, trade secrets or intellectual property, the disclosure

of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

- information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- information received in confidence from foreign Government;
- information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- information which would impede the process of investigation or apprehension or prosecution of offenders;
- cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

#### **7. Is partial disclosure allowed ?**

Only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information, may be provided. [S.10]

#### **8. What does a “public authority” mean ?**

It means any authority or body or institution of self-government established or constituted: [S.2(h)]

- \* by or under the Constitution;
- \* by any other law made by Parliament;
- \* by any other law made by State Legislature;
- \* by notification issued or order made by the appropriate Government. and includes any-
  - (a) body owned, controlled or substantially financed
  - (b) non-Government organization substantially financed directly or indirectly by the appropriate Government.

#### **9. Who is excluded ?**

Central Intelligence and Security agencies specified in the Second Schedule like IB, R&AW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep Police.

Agencies specified by the State Governments through a Notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights valuations could be given but only with the approval of the Central or State Information Commission, as the case may be. [S.24]

**10. Who are 'Third Parties' ?**

A third party means a person other than the citizen making a request for information and includes a public authority. Third parties have a right to be heard in respect of applications and appeals dealing with information submitted by them to the Government in confidence. [S.2(n) and S.11]

**11. Who are Public Information Officers (PIOs) ?**

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

**12. What are the duties of a PIO ?**

- ◆ PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing.
- ◆ If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately.
- ◆ PIO may seek the assistance of any other officer for the proper discharge of his/her duties.
- ◆ PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in S.8 or S.9.
- ◆ Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.
- ◆ If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request.
- ◆ Where a request has been rejected, the PIO shall communicate to the requester - (i) the reasons for such rejection, (ii) the period within which an appeal against such rejection may be preferred, and (iii) the particulars of the Appellate Authority.
- ◆ PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question.

- ◆ If allowing partial access, the PIO shall give a notice to the applicant, informing:
- ◆ that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
- ◆ the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;
- ◆ the name and designation of the person giving the decision;
- ◆ the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
- ◆ his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.
- ◆ If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request and take its representation into consideration.
- ◆ Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.

**13. What is the Application Procedure for requesting information ?**

- ⌘ Apply in writing or through electronic means in English or Hindi or in the official language of the area, to the PIO, specifying the particulars of the information sought for.
- ⌘ Reason for seeking information are not required to be given;
- ⌘ Pay fees as may be prescribed (if not belonging to the below poverty line category).

**14. What is the time limit to get the information ?**

- ⌘ 30 days from the date of application
- ⌘ 48 hours for information concerning the life and liberty of a person
- ⌘ 5 days shall be added to the above response time, in case the application for information is given to Assistant Public Information Officer.
- ⌘ If the interests of a third party are involved then time limit will be 40 days (maximum period + time given to the party to make representation).
- ⌘ Failure to provide information within the specified period is a deemed refusal.

**15. What is the fee ?**

- ⌘ Application fees to be prescribed which must be reasonable.
- ⌘ If further fees are required, then the same must be intimated in writing with calculation details of how the figure was arrived at;

- ⌘ Applicant can seek review of the decision on fees charged by the PIO by applying to the appropriate Appellate Authority;
- ⌘ No fees will be charged from people living below the poverty line
- ⌘ Applicant must be provided information free of cost if the PIO fails to comply with the prescribed time limit.

**16. What could be the ground for rejection ?**

- ⌘ If it is covered by exemption from disclosure. (S.8)
- ⌘ If it infringes copyright of any person other than the State. (S.9)

**17. Who are the Appellate Authorities ?**

- ⌘ First Appeal: First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).
- ⌘ Second Appeal: Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority. (delay may be condoned by the Commission if sufficient cause is shown).
- ⌘ Third Party appeal against PIO's decision must be filed within 30 days before first Appellate Authority; and, within 90 days of the decision on the first appeal, before the appropriate Information Commission which is the second appellate authority.
- ⌘ Burden of proving that denial of Information was justified lies with the PIO.
- ⌘ First Appeal shall be disposed of within 30 days from the date of its receipt. Period extendable by 15 days if necessary. (S.19)

**18. How is Central Information Commission constituted ?**

- ⌘ Central Information Commission to be constituted by the Central Government through a Gazette Notification.
- ⌘ Commission includes 1 Chief Information Commissioner (CIC) and not more than 10 Information Commissioners (IC) who will be appointed by the President of India.
- ⌘ Oath of Office will be administered by the President of India according to the form set out in the First Schedule.
- ⌘ Commission shall have its Headquarters in Delhi. Other offices may be established in other parts of the country with the approval of the Central Government.
- ⌘ Commission will exercise its powers without being subjected to directions by any other authority. (S.12)

**19. What is the eligibility criteria and what is the process of appointment of CIC/IC ?**

- ⌘ Candidates for CIC/IC must be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- ⌘ CIC/IC shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory. He shall not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. (S.12)
- ⌘ Appointment Committee includes Prime Minister (Chair), Leader of the Opposition in the Lok Sabha and one Union Cabinet Minister to be nominated by the Prime Minister.

**20. What is the term of office and other service conditions of CIC ?**

- ⌘ CIC shall be appointed for a term of 5 years from date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier.
- ⌘ CIC is not eligible for reappointment.
- ⌘ Salary will be the same as that of the Chief Election Commissioner. This will not be varied to the disadvantage of the CIC during service. (S.13)

**21. What is the term of office and other service conditions of IC ?**

- ⌘ IC shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier and shall not be eligible for reappointment as IC.
- ⌘ Salary will be the same as that of the Election Commissioner. This will not be varied to the disadvantage of the IC during service.
- ⌘ IC is eligible for appointment as CIC but will not hold office for more than a total of five years including his/her term as IC. (S.13)

**22. How is the State Information Commission constituted ?**

- ⌘ The State Information Commission will be constituted by the State Government through a Gazette notification. It will have one State Chief Information Commissioner (SCIC) and not more than 10 State Information Commissioners (SIC) to be appointed by the Governor.
- ⌘ Oath of office will be administered by the Governor according to the form set out in the First Schedule.
- ⌘ The headquarters of the State Information Commission shall be at such place as the State Government may specify. Other offices may be established in other parts of the State with the approval of the State Government.
- ⌘ The Commission will exercise its powers without being subjected to any other authority.

**23. What is the eligibility criterion and what is the process of appointment of State Chief Information Commissioner/State Information Commissioners ?**

- ⌘ The Appointments Committee will be headed by the Chief Minister. Other members include the Leader of the Opposition in the Legislative Assembly and one Cabinet Minister nominated by the Chief Minister.
- ⌘ The qualifications for appointment as SCIC/SIC shall be the same as that for Central Commissioners.
- ⌘ The salary of the State Chief Information Commissioner will be the same as that of an Election Commissioner. The salary of the State Information Commissioner will be the same as that of the Chief Secretary of the State Government. (S.15)

**24. What are the powers and functions of Information Commissions ?**

1. The Central Information Commission/State Information Commission has a duty to receive complaints from any person -
  - a) who has not been able to submit an information request because a PIO has not been appointed ;
  - b) who has been refused information that was requested;
  - c) who has received no response to his/her information request within the specified time limits;
  - d) who thinks the fees charged are unreasonable ;
  - e) who thinks information given is incomplete or false or misleading ;and
  - f) any other matter relating to obtaining information under this law.
2. Power to order inquiry if there are reasonable grounds.
3. CIC/SCIC will have powers of Civil Court such as -
  - a) summoning and enforcing attendance of persons, compelling them to give oral or written evidence on oath and to produce documents or things;
  - b) requiring the discovery and inspection of documents;
  - c) receiving evidence on affidavit ;
  - d) requisitioning public records or copies from any court or office
  - e) issuing summons for examination of witnesses or documents
  - f) any other matter which may be prescribed.
4. All records covered by this law (including those covered by exemptions) must be given to CIC/ SCIC during inquiry for examination.
5. Power to secure compliance of its decisions from the Public Authority includes-



- a) providing access to information in a particular form;
- b) directing the public authority to appoint a PIO/APIO where none exists;
- c) publishing information or categories of information;
- d) making necessary changes to the practices relating to management, maintenance and destruction of records ;
- e) enhancing training provision for officials on RTI;
- f) seeking an annual report from the public authority on compliance with this law;
- g) require it to compensate for any loss or other detriment suffered by the applicant ;
- h) impose penalties under this law; or
- i) reject the application. (S.18 and S.19)

**25. What is the reporting procedure ?**

1. Central Information Commission will send an annual report to the Central Government on the implementation of the provisions of this law at the end of the year. The State Information Commission will send a report to the State Government .
2. Each Ministry has a duty to compile reports from its Public Authorities and send them to the Central Information Commission or State Information Commission, as the case may be.
3. Each report will contain details of number of requests received by each Public Authority, number of rejections and appeals, particulars of any disciplinary action taken, amount of fees and charges collected etc.
4. Central Government will table the Central Information Commission report before Parliament after the end of each year. The concerned State Government will table the report of the State Information Commission before the Vidhan Sabha (and the Vidhan Parishad wherever applicable). (S.25)

**26. What are the penalty provisions ?**

Every PIO will be liable for fine of Rs. 250 per day, up to a maximum of Rs. 25,000/-, for -

- (i) not accepting an application;
- (ii) delaying information release without reasonable cause;
- (iii) malafidely denying information;
- (iv) knowingly giving incomplete, incorrect, misleading information;
- (vi) destroying information that has been requested and
- (v) obstructing furnishing of information in any manner.

The Information Commission (IC) at the Centre and the State levels will have the power to impose this penalty. The Information Commission can also recommend disciplinary action for violation of the law against an erring PIO. (S.20)

**27. What is the jurisdiction of courts ?**

Lower Courts are barred from entertaining suits or applications against any order made under this Act. (S.23) However, the writ jurisdiction of the Supreme Court and High Courts under Articles 32 and 225 of the Constitution remains unaffected.

**28. What is the role of Central/State Governments ?**

1. Develop educational programmes for the public especially disadvantaged communities on RTI.
2. Encourage Public Authorities to participate in the development and organization of such programmes.
3. Promote timely dissemination of accurate information to the public.
4. Train officers and develop training materials.
5. Compile and disseminate a User Guide for the public in the respective official language.
6. Publish names, designation postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc. (S.26)

**29. Who has the Rule making power ?**

Central Government, State Governments and the Competent Authority as defined in S.2(e) are vested with powers to make rules to carry out the provisions of the Right to Information Act, 2005. (S.27 & S.28)

**30. Who has the power to deal with the difficulties while implementing this act ?**

If any difficulty arises in giving effect to the provisions in the Act, the Central Government may, by Order published in the Official Gazette, make provisions necessary/expedient for removing the difficulty. (S.30)

**UGC CHAIRMAN ADVISES FOR QUICK UTILISATION OF FUNDS**

Chairman of UGC Prof. Sukhdeo Thorat held a high level meeting recently at Raj Bhawan to discuss various plans, proposals, problems of Orissa's Universities. He advised the Vice Chancellors to utilise the funds received under 10th plan. Governor and chancellor of Universities Rameshwar Thakur requested the chairman to consider Orissa's case with sympathy and compassion so that Orissa will march ahead and be equal with other states. Thakur said, with 86% of the population living in villages with abundant natural resources, Orissa should have been a leading state.

Prof. Thorat discussed with the Vice Chancellor regarding various problems ranging from approval of proposals, sanction of funds, allocation of funds and utilisation of funds, receiving the balance amount, sanction of posts etc. He advised the Vice Chancellors of BPUT and Culture University to take required steps so that these can come under Sec. 12(B) of UGC Act after which they will be eligible to receive grants.

Finance Minister Prafulla Chandra Ghadai, Agriculture Minister Surendranath Nayak, Higher Education Minister Sameer Dey, Secretaries Ashok Tripathy, Nilanjan Sanyal, Gopinath Mohanty and all nine Vice Chancellors were present.

# THE ORISSA HIGH COURT RIGHT TO INFORMATION RULES, 2005

HIGH COURT OF JUDICATURE, ORISSA, CUTTACK

## NOTIFICATION

The 23rd February 2006

No.77 — In exercise of power conferred under Section 28 (1), Section 2 (e) (III) and Section 2(h), read with Section 5 of The Right to Information Act, 2005 (Act No.22 of 2005), the Chief Justice of the High Court of Orissa being the Competent Authority with the concurrence of the Public Authority does hereby make the following Rules :

### CHAPTER - I GENERAL

1. Short Title and commencement-
  - (i) These Rules shall be called "The Orissa High Court Right to Information Rules, 2005".
  - (ii) They shall come into force with effect from the date of publication in the *Orissa Gazette*.
2. Definition — In these rules unless the context otherwise requires-
  - (a) "Act" means Right to Information Act, 2005 (No.22 of 2005).
  - (b) "Competent Authority" means the Chief Justice of Orissa High Court.
  - (c) "Ministerial Officer" means an officer other than a Judicial Officer of the Court.
  - (d) "Outlying Court" means a Court not situated at the Headquarters of the district where seat of the District and Sessions Court is situated.
  - (e) "Public Authority" means the High Court of Orissa.
  - (f) "Subordinate Court" means the Judicial Courts subordinate to the High Court of Orissa situated within its territorial jurisdiction.

- (g) Words and Expressions used but not defined in these rules shall have the same meaning as are respectively assigned to them in the Act.

## CHAPTER-II

### DESIGNATION AND POWERS

3. (a) The Additional Deputy Registrar (J & E.) shall be the *ex officio* State Public Information Officer of the High Court.

(b) The Registrar (Judicial) of the High Court shall be the Appellate Authority of the State Public Information Officer in respect of the Public Authority.

(c) The Ministerial Officers of the stations as mentioned in the Appendix-I shall be the *ex officio* State Assistant Public Information Officer of the respective areas.

(d) The District Judge of the concerned district shall be the Appellate Authority in respect of the appeal filed against the order of the State Assistant Public Information Officer posted at the Headquarters of the district.

(e) The senior most Judicial Officers of the station as indicated in Appendix I shall be the Appellate Authorities of their respective areas to decide the appeal against the order of the State Assistant Public Information Officer of the concerned area.

## CHAPTER-III

### FEEES

4. (a) A person desirous of an information authorized under the Act may apply for information to State Public Information Officer or State Assistant Public Information Officer by filling an application with declaration on oath as indicated in the prescribed *pro forma* in Appendix-II or Appendix-II (A) as the case may be on payment of Rs.50 towards application fees in shape of non-judicial stamp.

4. (b) When a copy is required in respect of an application is completed, it will be made over by the Copyist/Typist concerned together with the original documents to the comparer who shall be responsible for the correctness of the copy prepared. The prepared copy shall at the end bear the initial of the Copyist/Typist concerned and every page of the compared copy shall also be initialed by the comparer in token of comparison. All cuttings and corrections made during comparison will be initialed by the comparer who shall on completion of comparison put his/her signature with date at the foot of the last page of the copy. The certified copy of such document shall be issued under the signature of State Public Information Officer or the State Assistant Public Information Officer as the case may be.

(c) The person applying for such information may obtain the copy thereof on further payment of Rs.20 in shape of non-judicial stamp for each sheet of paper comprising of 180 words or part thereof.

(d) The form of application for information shall be obtained from the office of the State Public Information Officer or State Assistant Public Information Officer, as the case may be at the rate of Rs.10 per form. Each application form shall contain a serial number and signature of the issuing clerk with the date of issue and the seal of the State Public Information Officer or State Assistant Public Information Officer as the case may be.

(e) The applications for an information shall be consecutively numbered and registered as they are received along with its date in the Register to be maintained in the form prescribed in Appendix-III.

(f) The application form for information shall be issued and received during the office hours of the working days of State Public Information Officer or State Assistant Public Information Officer as the case may be.

(g) Cost will be determined within three working days of receipt of the application form.

(h) If the required information or decision on the disposal of the application is not received within 3 months, the same will be destroyed and the applicant will have to apply afresh in accordance with the procedure.

#### CHAPTER-IV

#### MISCELLANEOUS

5. No information shall be provided to any applicant in the following matters :-

(i) In respect of the document or records produced in a judicial proceeding.

(ii) The information, which is likely to affect the security of any institution or the public order

(iii) The information, which has no relationship with the public activity

(iv) The information, which could cause unwarranted invasion of the privacy to any person.

(v) Separate application shall be filed for information in respect of the separate record or information.

(vi) Other materials described in Sections 8 and 9 of the Act.

BY ORDER OF THE COURT

K. N. PANIGRAHY  
Registrar (I. & E.)

#### APPENDIX-I

#### LIST OF STATE ASSISTANT PUBLIC INFORMATION OFFICER IN THE SUBORDINATE COURTS AND ITS APPELLATE AUTHORITY

Sl. No.	Name of the Station	State Assistant Public Information Officer	Appellate Authority
(1)	(2)	(3)	(4)
CUTTACK			
1.	Cuttack	Sheristadar	District & Sessions Judge
2.	Athagarh	Sheristadar	Civil Judge( Sr. Division)

3.	Baramba	Sheristadar	Additional Civil Judge( Jr. Division)
4.	Narasinghpur	Senior-most Sr. Clerk	J.M.F.C.
5.	Banki	Sheristadar	Civil Judge( Sr Division)
6.	Salipur	Sheristadar	Civil Judge( Jr. Division)
7.	Jagatsinghpur	Bench Clerk	Additional District Judge
8.	Kujanga	Sheristadar	Civil Judge (Jr. Division)
9.	Kendrapara	Bench Clerk	Addl. District Judge
10.	Pattamundai	Senior-most Sr. Clerk	Civil Judge (Jr. Division) JMFC
11.	Jajpur	Bench Clerk	Addl. District Judge
12.	Jajpur Road	Sheristadar	Civil Judge (Jr. Division)
PURI			
13.	Puri	Sheristadar	District & Sessions Judge
14.	Nimapara	Sheristadar	Civil Judge (Sr. Division)
15.	Pipili	Senior-most Sr. Clerk	Civil Judge (Jr. Division), JMFC
16.	Nayagarh	Bench Clerk	Addl. District Judge
17.	Daspalla	Senior-most Sr. Clerk	Civil Judge (Jr.Division), JMFC
18.	Khandapara	Senior-most Sr. Clerk	Civil Judge (Jr. Division), JMFC
19.	Ranpur	Senior-most Sr. Clerk	JMFC
KHURDA			
20.	Bhubaneswar	Sheristadar	District & Sessions Judge
21.	Khurda	Bench Clerk	Addl. District Judge
22.	Khurda Road	Senior-most Sr. Clerk	Special Railway Magistrate
23.	Banpur	Senior-most Sr. Clerk	Civil Judge (Jr. Division), JMFC
DHENKANAL			
24.	Dhenkanal	Sheristadar	District & Sessions Judge
25.	Hindol	Sheristadar	SDJM
26.	Kamakshyanagar	Sheristadar	Civil Judge (Sr. Division)
27.	Angul	Bench Clerk	Addl. District Judge
28.	Talcher	Bench Clerk	Addl. District Judge
29.	Pallahara	Sheristadar	SDJM
30.	Athamallick	Sheristadar	Civil Judge (Sr. Division)
BALASORE			
31.	Balasore	Sheristadar	District & Sessions Judge
32.	Jaleswar	Sheristadar	Addl. Civil Judge (Jr. Division)
33.	Soro	Senior-most Sr. Clerk	Addl. Civil Judge (Jr. Division),JMFC
34.	Nilgiri	Sheristadar	Civil Judge (Sr. Division)
35.	Bhadrak	Bench Clerk	Additional District Judge
36.	Basudevpur	Senior-most Sr. Clerk	Addl. Civil Judge (Jr. Division) JMFC

## KALAHANDI

37.	Bhawanipatna	Sheristadar	District & Sessions Judge
38.	Madanpur-Rampur	Senior-most Sr. Clerk	Additional Civil Judge (Jr. Division), JMFC
39.	Dharamgarh	Sheristadar	Civil Judge (Sr. Division)
40.	Nuapada	Bench Clerk	Additional District Judge
41.	Khariar	Senior-most Sr. Clerk	Additional Civil Judge (Jr. Division), JMFC

## SAMBALPUR

42.	Sambalpur	Sheristadar	District & Sessions Judge
43.	Kuchinda	Sheristadar	Civil Judge (Sr. Division)
44.	Rairakhola	Sheristadar	SDJM
45.	Deogarh	Bench Clerk	Additional District Judge
46.	Baragarh	Bench Clerk	Additional District Judge
47.	Padampur	Sheristadar	Civil Judge (Sr. Division)
48.	Sohella	Senior-most Sr. Clerk	JMFC
49.	Barpalli	Senior-most Sr. Clerk	Civil Judge (Jr. Division), JMFC
50.	Jharsuguda	Bench Clerk	Additional District Judge

## BOLANGIR

51.	Bolangir	Sheristadar	District & Sessions Judge
52.	Patnagarh	Sheristadar	Civil Judge (Sr. Division)
53.	Kantabanji	Senior-most Sr. Clerk	JMFC
54.	Titilagarh	Bench Clerk	Additional District Judge
55.	Sonepur	Bench Clerk	Additional District Judge
56.	Biramaharajpur	Sheristadar	SDJM
57.	Rampur	Senior-most Sr. Clerk	Civil Judge (Jr. Division), JMFC
58.	Lusingha	Senior-most Sr. Clerk	JMFC

## KORAPUT

59.	Jeypore	Sheristadar	District & Sessions Judge
60.	Laxmipur	Senior-most Sr. Clerk	JMFC
61.	Kotpad	Senior-most Sr. Clerk	JMFC
62.	Koraput	Sheristadar	Civil Judge (Sr. Division)
63.	Nawarangapur	Bench Clerk	Additional District Judge
64.	Umerkote	Senior-most Sr. Clerk	JMFC
65.	Malkanagiri	Bench Clerk	Additional District Judge
66.	Mottu (M.V.79)	Senior-most Sr. Clerk	JMFC
67.	Rayagada	Bench Clerk	Additional District Judge
68.	Kashipur	Senior-most Sr. Clerk	JMFC

69.	Bissam-Cuttack	Senior-most Sr. Clerk	JMFC
70.	Gunupur	Sheristadar	Civil Judge (Sr. Division)
GANJAM			
71.	Berhampur	Sheristadar	District & Sessions Judge
72.	Digapahandi	Senior-most Sr. Clerk	JMFC
73.	Chhatrapur	Sheristadar	Civil Judge (Sr. Division)
74.	Sorada	Sheristadar	Civil Judge (Jr. Division), JMFC
75.	Bhanjanagar	Bench Clerk	Additional District Judge
76.	Kodala	Senior-most Sr. Clerk	Civil Judge (Jr. Division), JMFC
77.	Aska	Sheristadar	Civil Judge (Sr. Division)
78.	Khallikote	Senior-most Sr. Clerk	JMFC
79.	Patrapur	Sheristadar	Civil Judge (Jr. Division)
80.	Purusottampur	Senior-most Sr. Clerk	JMFC
81.	Paralakhemundi	Bench Clerk	Additional District Judge
82.	R. Udayagiri	Senior-most Sr. Clerk	JMFC
PHULABANI			
83.	Phulabani	Sheristadar	District & Sessions Judge
84.	G. Udayagiri	Senior-most Sr. Clerk	JMFC
85.	Daringbadi	Senior-most Sr. Clerk	Civil Judge (Jr. Division), JMFC
86.	Baliguda	Sheristadar	Civil Judge (Sr. Division)
87.	Boudh	Bench Clerk	Additional District Judge
88.	Kantamal	Senior-most Sr. Clerk	Civil Judge (Jr. Division), JMFC
SUNDARGARH			
89.	Sundargarh	Sheristadar	District & Sessions Judge
90.	Bonai	Sheristadar	Civil Judge (Sr. Division)
91.	Rajgangpur	Senior-most Sr. Clerk	JMFC
92.	Rourkela	Bench Clerk	Additional District Judge
MAYURBHANJ			
93.	Baripada	Sheristadar	District & Sessions Judge
94.	Rairangapur	Bench Clerk	Additional District Judge
95.	Udala	Sheristadar	Civil Judge (Sr. Division)
96.	Karanjia	Sheristadar	Civil Judge (Sr. Division)
KEONJHAR			
97.	Keonjhar	Sheristadar	District & Sessions Judge
98.	Champua	Sheristadar	Civil Judge (Sr. Division)
99.	Barbil	Senior-most Sr. Clerk	Civil Judge (Jr. Division), JMFC
100.	Anandapur	Sheristadar	Civil Judge (Sr. Division)



APPENDIX - II  
APPLICATION FORM FOR INFORMATION  
SERIAL NO. \_\_\_\_\_  
IN THE HIGH COURT OF ORISSA, CUTTACK

Space for  
Court Fee  
Stamp

<p>Description of document of which the information is required.</p> <p>Declaration :</p> <p>I, ..... the applicant do hereby solemnly affirm and state that the facts stated in the application form are true to my knowledge and are based on information which I have obtained from the authentic sources. I believe the said information to be true and the information sought for by me are not coming within the purview of Section 8 (1) (a) to (j) of The Right to Information Act, 2005 and under Rule 5 of The Orissa High Court Right to Information Rules, 2005.</p> <p style="text-align: right;">Signature of the applicant Date :</p>	<p>I, ..... son of ..... at ..... P.S. .... Dist. .... do hereby apply for the information / order passed by the Hon'ble High Court relating to. ....</p> <p style="text-align: center;">Dated this ..... day of ..... 20</p> <p style="text-align: right;">Signature of the applicant</p>
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FOR OFFICE USE ONLY

<p>Application received on .....</p> <p>Copy ready for supply .....</p> <p>Compared by (1) ..... (2) .....</p> <p style="text-align: right;">Signature of the Issuing Clerk</p> <p>Date .....</p> <p>Received copy of information Signature of the applicant</p>	<p>Estimated Cost .....</p> <p>Record received on .....</p> <p>Information ready on .....</p> <p>Information delivered on .....</p> <p style="text-align: center;">State Public Information Officer</p> <p>Date ..... (Seal)</p>
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**APPENDIX - II-A  
APPLICATION FORM FOR INFORMATION**

**SERIAL NO. \_\_\_\_\_  
IN THE COURT OF .....**

Space for  
Court Fee  
Stamp

<p>Description of document of which the information is required.</p> <p>Declaration :</p> <p>I, ..... the applicant do hereby solemnly affirm and state that the facts stated in the application form are true to my knowledge and are based on information which I have obtained from the authentic sources. I believe the said information to be true and the information sought for by me are not coming within the purview of Section 8 (1) (a) to (j) of The Right to Information Act, 2005 and under Rule 5 of The Orissa High Court Right to Information Rules, 2005.</p> <p align="right">Signature of the applicant Date :</p>	<p>I, ..... son of ..... at ..... P.S. .... Dist. .... do hereby apply for the information / order passed by the Court relating to. .... .....</p> <p align="center">Dated this ..... day of ..... 20</p> <p align="right">Signature of the applicant</p>
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**FOR OFFICE USE ONLY**

<p>Application received on .....</p> <p>Copy ready for supply .....</p> <p>Compared by (1) ..... (2) .....</p> <p align="right">Signature of the Issuing Clerk</p> <p>Date .....</p> <p>Received copy of information</p> <p align="right">Signature of the applicant</p>	<p>Estimated Cost .....</p> <p>Record received on .....</p> <p>Information ready on .....</p> <p>Information delivered on .....</p> <p align="center">State Assistant Public Information Officer</p> <p>Date ..... (Seal)</p>
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**APPENDIX - III**  
**REGISTER OF APPLICATIONS FOR INFORMATION IN THE**  
**ORISSA HIGH COURT, CUTTACK**

Serial Number with date of application	Name of the applicant with address	Date of estimating the value of Court Fees to be paid	Date of filing of deficit stamp	Date of delivery of information	Signature of the applicant	Remarks
1	2	3	4	5	6	7

- N.B. - (1) If application is rejected, brief reasons thereof shall be entered in red ink in the remarks column.
- (2) If there is delay beyond the prescribed period in delivery of the information, the reasons for such delay be noted in the remarks column.
- (3) Register be verified by the State Public Information Officer / State Assistant Public Information Officer once in every week.

**DOORDARSHAN ORGANISES CROP SEMINAR AT BARI**

A National Crop Seminar was organised at Kanthapoi, Arangabad Panchayat of Bari Block in Krishi Darshan programme by Doordarshan on November 10. Inaugurating the programme, Shri Debasis Nayak, Minister, Information & Public Relations, Sports & Youth Services said this novel programme by Doordarshan will certainly promote farming in our state and immensely benefit the farming community. Farmers across the block made their queries on fishery, vegetable crop, rice crop, groundnut and other oil seeds which were answered by the experts present on the occasion. The programme was directly telecast by Doordarshan. Among others, District Collector, Shri Arabinda Padhi and Director, Doordarshan, Bhubaneswar, Shri Baraha Mohanty were present.

**APPLICATION FORMS RECEIVED AT RIGHT TO INFORMATION  
CELL, ORISSA SECRETARIAT, BHUBANESWAR FOR DIFFERENT  
DEPARTMENTS BY OCTOBER, 2006**

<b>SL. NO.</b>	<b>NAME OF THE DEPARTMENTS</b>	<b>TOTAL APPLICATION</b>
1	General Administration Department	209
2	Steel & Mines Department	65
3	Higher Education Department	164
4	Water Resources Department	90
5	Revenue Department	126
6	Industry Department	55
7	School & Mass Education Department	222
8	Law Department	32
9	Housing & Urban Development Deptt.	95
10	Health & Family Welfare Department	140
11	Finance Department	54
12	SC & ST Department	46
13	Agriculture Department	45
14	Panchayati Raj Department	56
15	Culture Department	12
16	Energy Department	45
17	Cooperation Department	27
18	Works Department	26
19	Parliamentary Affairs Department	12
20	Food & Civil Supply Department	32
21	Home Department	96
22	P.G. & P.A. Department	13
23	Forest & Env. Department	93
24	Women & Child Development Deptt.	34
25	Information & Public Relations Deptt.	19
26	Public Enterprises Department	5
27	Textile & Handloom Department	10
28	Labour & Employment Department	6
29	Commerce & Transport Department	19
30	Sports & Youth Affairs Department	3
31	Excise	9
32	Planning & Coordination	16
33	Fisheries & A.H.	24
34	Rural Development	5
35	Science & Technology	2
36	Tourism	3
37	Information Technology	2
<b>TOTAL</b>		<b>1912</b>

# FIRST APPEAL & APPELLATE AUTHORITY

## Channels of Appeal

The Act provides for two channels of appeal against the decision of a PIO on the request for information by a citizen-an internal or 'first' appeal to a designated officer "senior in rank" to the PIO, called the first appellate authority as notified by the Public Authority and a 'second' appeal to the Information Commission.

## First Appellate Authority

Under Section 7(8)(iii), it refers to "appellate authority" to whom appeal can be made by a person whose request has been rejected. Section 19(1) refers to first appeal being made to such "officer who is senior in rank to the Central PIO or State PIO, as the case may be".

It is important to note that the Appellate Authority must be an officer senior in rank to the PIO such that he is fully conversant with the work of the organization, the subjects dealt with by it and the functions discharged by various PIOs. The number of designated Appellate Authorities in a Public Authority could be small as compared to the number of PIOs. One Appellate Authority could easily meet the requirement of appeals arising out of the decisions of a number of PIOs. However, keeping the nature of responsibilities to be discharged under the Act and the structure and functions of the organization at various levels in views, each Public Authority has to determine

the number of senior officers to be designated as AA, the rank at which the designation would be made and (if applicable) the PIOs against whose decisions they would hear appeals.

The Appellate Authority within a Public Authority should attempt keep himself/herself updated such that he/she:

- \* Would be fully conversant with the functioning of the organization;
- \* Would be able to command various sources of information of the authority and meet the access requirements of the public.
- \* Would be able to present to the parent department a complete and correct picture regarding the state of implementation of the Act by the authority;
- \* Would usually have first hand knowledge of the operation of the Act within his/her organization.
- \* Would be in a position to explain to the next appellate authority, i.e. the Information Commission regarding the reasons behind the outcomes of first appeals.
- \* Would be able to inculcate a sense of responsibility among the PIOs and APIOs within the authority to be responsive to the requests of citizens for information.

Furthermore as the head of the authority, analyzing the type of information sought from the organization, he or she can be in a better position to determine additional areas requiring proactive disclosure/publication.

The advantages listed above may be weighed against factors such as whether the heads of the public authority would be in a position to devote time for deciding time-consuming appeals, given the nature and extent of his/her workload. The departments concerned may take appropriate decisions weighing the pros and cons.

### **Disposal of First Appeals**

Section 19(1) of the Act stipulates that any person who, does not receive a decision on request for information within the stipulated time or is aggrieved by a decision of the PIO including intimation of fees to be paid may within 30 days from the expiry of such period or from the receipt of such a decision prefer an appeal to the designated AA. Section 19(2) allows a third party to make an appeal against the order made by the PIO.

The AA may admit the appeal after the expiry of the period of 30 days if he/she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Where an appeal is preferred against an order made by a PIO to disclose "third party" information, the appeal by the concerned third party, however, shall be made within 30 days from the date of the order.

The Act prescribes that the appeal shall be disposed of within 30 days of the receipt of the appeal or within such extended period not exceeding a total of 45 days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

### **Importance of Public Interest in Disposal of Appeal**

The Right to Information Act, 2005 calls for a paradigm shift in the approach to governance. It is an Act which will be implemented by the people and acted upon by the Government. The larger public interest will always be more important than private or protected interest. Overall, if the public interest in disclosure to the citizen outweighs the harm to the protected interest, then the public authority may provide information.

The Appellate Authorities would need to give due consideration to 'public interest' as the predominant consideration in the supply of information to citizens where dealing with appeals, including cases where the PIOs might have erred in judging the privacy of individual.

### **Action in Good Faith**

Under Section 21 of the Act, any action taken in good faith is protected. The General Clauses Act, 1897 defines 'good faith' as "a thing..... deemed to be done in "good faith", where it is in fact done honestly, whether it is done negligently or not".

No suit, prosecution or other legal proceeding lies against the person who has done or intended to do anything which is in good faith. That an action was done in good faith must, however, be proved based on documentary evidence.

The documents to be presented as proof to establish that a decision was taken in good faith cannot be got prepared overnight. To a large extent, quick and effective disposal of information requests will depend on the manner in which the Public Authority maintains and manages its records. Yet, in any case, the registers to be maintained for receipt of request applications,

acknowledgements, those for transfer of applications to other public authorities and officers with dates( and the acknowledgement of such transfers), reasons for decision etc. would all be required. The entries in such registers will have to be correct and complete.

Section 5(5) states that any officer whose assistance has been sought shall render all the assistance to the PIO by furnishing information, and in the event of any contravention of any provisions of the Act by such other officer, the said officer shall be deemed to be a PIO. Hence, it is important for the PIO to maintain records/ acknowledgements of letters seeking assistance from other officers.

Since the Appellate Authority (or the Information Commission) is to hear evidences, peruse and inspect documents and receive evidences for arriving at a decision on an appeal, the PIO is to be provided ample opportunity to defend him/herself with supporting evidences (in the form of records of the disposal of a request at his end).

### **Well Reasoned Order**

The onus to prove that a denial of request was justified lies on the PIO, who denied the request. This burden of proof under Section 19(5) has to be supported by documentary evidence.

As per the provision of Section 7(8) of the Act, the PIO, when rejecting a request has to communicate (to the person making a request) the following:

- (i) The reasons for such rejection;
- (ii) The period within which an appeal against such rejection may be preferred.

(iii) The particulars of the Appellate Authority to whom appeal can be preferred.

Similarly, for the requests where information is provided, he/she is required to intimate the amount of fees to be paid, the calculation details of fees charged and also that the decision of charging a certain amount of fee can be appealed against, details of Appellate Authority and the period within which the appeal could be preferred.

While providing requisite information or rejecting the request, the PIO has to issue well-reasoned communications. The reasons are to be given in proper order and the rights of the citizen to appeal are to be explicitly stated. Such communication should clarify the position to the applicants and enable the AA ( or the Information Commission hearing a second appeal) to identify the cause for rejection or basis for fee determination etc. It will also help the Appellate Authority or the Information Commission in issuing decision(s).

### **Principle of Natural Justice**

The procedure for deciding an appeal by an Appellate Authority (or the Information Commission) must take into account the application of the principles of natural justice. No person should be condemned unheard. Both the sides will have to be given opportunity to be heard and also to submit any document etc. for perusal and inspection by the concerned, during appeal. Fair play will thus be an essential ingredient of any decision taken.

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**Source-** R.T.I Cell YASODA

## PUBLIC INFORMATION OFFICER

Public Information Officer (PIO) under the R.T.I. Act is the front end of Public interface as all applications are to be filed with him/her whose functioning determines the extent of success or failure of the Act. Not only does he/she take applications from citizens, but it is also a PIO's duty to collect the information asked for within the organization and supply it to the applicant within a stipulated time. As such it is most urgent that the PIO system is strengthened.

### **Duties and Responsibilities**

(1) Public Information Officers are designated in all administrative units and offices of public authority to provide information to persons requesting for the information under the Act.

(2) Assistant Public Information Officers are designated to receive applications and appeals for passing them on to the concerned PIOs and Appellate Authority respectively. This ensures that the public can apply for information in their own local areas.

(3) The PIOs are expected to deal with the requests for information and also provide reasonable assistance to those needing the same.

(4) The PIO may seek the assistances of another officer for the discharge of his/her duties.

In such eventuality, the other officer would be treated as PIO, under Sec.5(5) of the Act.

(5) The Public Information Officer's duties include:

(a) Dealing with requests from persons seeking information and where the requests cannot be made in writing, to render reasonable assistance to convert the same in writing.

(b) If the information requested for is held by or is a subject matter closely connected with the functions of another authority, the PIO shall transfer that request, within five days, to the other public authority and inform the applicant immediately.

(c) PIO may seek the assistance of any other officer for the proper discharge of his/her duties.

(d) PIO, on receipt of the request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed along with the application or reject the request for any of the reasons specified in Sec.8 or 9.

(e) Where the information requested concerns the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request.



(f) Where a request has been rejected, the PIO shall communicate to the applicant, the reasons for such rejection, the period within which the appeal against such rejection may be preferred, and the particulars of the Appellate Authority.

(g) PIO shall provide information in the form in which it is sought unless it would be disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

(h) In allowing partial access, the PIO shall give a notice to the applicant, informing:

- a) That, only part of the record, after severance of the record containing information which is exempted from disclosure, is being provided.
- b) The reasons for the decisions, including any findings on any material, question of fact, referring to the material on which those findings were based.
- c) The name and designation of the person giving the information.
- d) The details of the fees calculated and the amount of fee which the applicant is required to deposit, etc.

(i) If information sought has been supplied by third party or is treated as confidential by third party, the PIO shall give a written notice to third party within five days from the receipt of the request and take its representation into consideration.

(j) Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.

### **Onus on the PIO**

(1) Total onus rests with the PIO in providing the information sought within the stipulated period

of 30 days. He is the interface between the citizen and the organization.

(2) The applicant could be aggrieved with:

- (i) The way the information is provided.
- (ii) The reasons for rejection of the application.
- (iii) Time involved in the supply of requisite information.
- (iv) The quantum of amount charged as fees for supplying the information.

And he can, thus, go in appeal to the Appellate Authority and later, if not satisfied, to the Information Commission in second appeal.

(3) Depending on the findings and the decisions taken, the penalty is levied on the PIO only.

(4) The burden is on the PIO to prove that he acted reasonably and diligently, before the Information Commission. He has to prove himself that he has acted in 'good faith'. He has to support the same with documentary evidence.

### **Understanding of the Information**

(1) 'Information' means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, samples, models, data material held in any electronic form, and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

(2) The word 'material' is an all inclusive term. The Act provides total and complete right to 'information' and not to 'records' or 'documents' only. It permits the public to inspect public works and also take samples of material.

(3) As far as private bodies are concerned, seeking of information from such bodies is limited to the statutory information which they are supposed to provide to any public authority under any law.

(4) Any information which cannot be denied to the Parliament or the State Legislature has to be provided by the PIO to the person seeking that information.

(5) Except in the case of trade or commercial secrets, protected by law, the PIO may allow disclosures to the public, if the interest in the disclosure outweighs in importance any possible harm or injury to the interest of the third party.

#### **Taking off**

(1) The Public Information Officer is the most important functionary in the scheme of things. The total responsibility of the success of the Right to Information Act rests on him.

The PIOs should be ready with the following:

- \* Information available electronically.
- \* Information proactively published by the public authority.
- \* Full details of the organization.
- \* The details of the Appellate Authorities.
- \* Proforma of the receipt of the application.
- \* The forms for receipt of fees and acknowledgement.
- \* Proper seating arrangements for easy accessibility.
- \* Register for receipt, acknowledgements- separately for inward and outward and watch register.
- \* Checklist for monitoring the pendency, disposal of the applications.

- \* Identify place for inspection of records/ taking samples
- \* Fix a day in the week for the proceeding.
- \* Ready with the contingency plan.
- \* R.T.I. Bare Act, Operational RTI Rules & amendment their of, operational guideline issued from time to time should be in his possession.

#### **Procedure and Steps Required**

(1) Procedure to be followed by the information officer right from the stage of receipt of application for information till the disposal involves a number of steps. The time stipulated for completing these steps are :

- |         |   |
|---------|---|
| 30 days | For providing information, or for rejection, or for providing partial information, organizing inspection of the material/sample, etc. |
| 35 days | From the time the application is received by the Asst. PIO and finally disposed off.  |
| 40 days | If a third party is involved.   |

(2) Procedural channel may briefly be indicated as :

- a. PIO receives application along with the application fee.
- b. PIO scrutinizes the application received and the fee.
- c. If required he renders reasonable assistance to the applicant by reducing the oral request in writing.
- d. Issues acknowledgement/receipt to the applicant.
- e. Transfers the application/part of it to another public authority.

- f. Informs the applicant about such transfers.
  - g. Makes necessary entries in the Special Register.
  - h. Considers the representations of the third party, if any.
  - i. In case of rejection, conveys reason for it, the period within which the appeal may be preferred and the details of the Appellate Authority.
  - j. Communicates to the applicant the fee amount to be paid along with its calculations.
  - k. Also intimates the right of the applicant for review of the fees charged.
  - l. Wherever required provides assistance for inspection of the material.
  - m. Waves application fees for citizens below poverty line/for information given beyond the estimated time period.
  - n. Retains record on each application, updates records, etc.
- (3) The PIO also constantly keeps in view:
- \* The information which cannot be denied to the Parliament or the State Legislature, should not be denied to any citizen.
  - \* Notwithstanding the exemptions permissible under the Act, access to information is allowed, if public interest in disclosure outweighs the harm to the protected interest.
  - \* Right to Information Act, 2005 overrides the Official Secrets Act, 1923.
  - \* Any material relating to occurrence, event, or matter, which has taken place, occurred, or happened up to 20 years before the date of the application, has to be provided to the applicant.

- \* Access to information should not involve an infringement of copyright subsisting in a person other than the state.

### **Dealings with the APIOs and Other Departments**

(1) The PIO has to keep in constant touch with the APIOs. The APIOs are there to avoid public seeking information from the district, sub-district traveling to the place of posting of the PIOs. Where an application or an appeal is received by the APIO, a period of five days is added in computing the period for response. The APIOs' job is that of a postman. He does not directly deal with any of the applications.

(2) The APIOs need to provide information from time to time on the status of the application: where will information be provided, where will information be denied, on the fees charged and the basis for the same, etc. along with the data on applications wherein the action taken has exceeded the prescribed time limit etc.

(3) The formats for the various forms, registers, etc. could be improved upon over a period of time with due deliberations with the APIOs.

(4) The PIO may transfer the requests for information either in total or partially to another organization/department as the subject matter pertains to the other department. Similarly an information officer could get a request transferred to him from another organization/department. In both the cases, a period of five days is added in computing the period of response.

(5) The responsibility of the PIO does not cease when a request is transferred to another public authority. While transferring, he has to inform the applicant about the same. He could also require to keep a record of transfer in his outward register for future references and monitoring.

(6) The Co-ordination between the two public authorities in such cases would also enable the concerned PIO to picture the correct position before the Appellate Authorities or Information Commission, as the cases may be, when the applicant prefers appeal.

### **Right of the Citizen**

(1) With the Right to Information Act, 2005 in position, disclosure is a rule and secrecy is an exception. The Act also enables the principle of Human Right to be realized.

(2) The Act confers a right to information and not just records or documents. "Information" again stands for any material. It permits the inspection, including the taking of samples by a citizen.

(3) An individual's right to privacy is protected in the Act. The privacy exemption included in the Act reflects underlying public interest in protecting personal privacy.

(4) Keeping the importance attached to the citizen's right to information, the Act bars the courts from entertaining any suit application or other proceeding in respect of any order made under this Act and no such orders shall be called in question otherwise than by way of an appeal under this Act.

(5) Seeking information is the citizen's right, and an applicant making a request for information cannot be asked to give any reason for requesting the information or any other personal details except those that may be necessary for contacting that applicant.

(6) There can be situations where an applicant has multiple questions in a single request. It could also be possible some of the questions may pertain to the areas allocated to other PIOs. Can he request the applicant to make more than one application and given them to the concerned PIOs and await responses from each one of

them? The negotiating skill of the PIO, would play an important part in ensuring that he does not become a mere postman and send copies of the request to others, await their responses for consolidation, and then finally respond to the applicant.

### **Types of Help to be Extended to the Citizen**

(1) Every PIO is expected to deal with the requests from persons seeking information and render reasonable assistance to the person seeking such information.

(2) The help from the PIO could be in any form as follows:

- \* Where a citizen is unable to make a request in writing, the PIO will render assistance to the person making the request orally to reduce the same in writing.
- \* Where the information sought concerns the life or liberty of the person, the PIO will take all steps to provide the required information within 48 hours of receipt of such request.
- \* When the person to whom the access to record is to be provided is seriously disabled, the PIO should provide assistance to enable access to the information, including such assistance appropriate for the inspection.
- \* The PIO will not charge fee for providing information to persons who are below the poverty line.
- \* When the right includes inspection of records, the PIO will reserve place and time for such inspection. Necessary arrangements have to be made to ensure that the citizen can carry out the inspection without any disturbance or distraction.

\* PIO would also make necessary arrangements for giving material samples, wherever required.

**Time Frame**

(1) "Justice delayed is justice denied". Similarly, there should not be any undue delay in providing information sought by the public. The Act, therefore, stipulates time limits for supply of information. If the requisite information is not provided to the applicant within the stipulated period, the applicant can prefer an appeal against it.

(2) In the event of above, the Information Commission would impose penalty of Rs.250 per day till application is received or information is furnished. However, the total amount of such penalty shall not exceed Rs.25,000. The Information Commission could also recommend disciplinary action against the PIO under the service rules applicable to him.

(3) Every public authority is required to designate an information officer within 100 days of enactment of the Act. The time limits prescribed in regard to the supply of information, etc. are:

- 30 days On receipt of a request for information, the PIO has either to provide information of such fees as prescribed or reject the request with reasons for the same.
- 48 hours If the information sought concerns the life or liberty of a person, the same has to be provided immediately, in any case, within 48 hours.
- 5 days Where the PIO intends to disclose any information which relates to or has been supplied by a third party and has been treated as confidential

by it, the PIO has to give a written notice to such third party and invite the third party to make a submission

- 10 days for third party to make a submission.
- 35 days An additional five days are added if the application for information is received by the APIO.
- 35 days Similarly an additional 5 days are added if the subject of the application pertains to another organization/ department.

**Exemptions**

- (1) There is no obligation to give any citizen the following:
  - (a) Information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific, or economic interests of the State, relation with the foreign State or lead to incitement of an offence.
  - (b) Information, which is expressly forbidden by any court of law or tribunal to be published, or the disclosure of which may constitute the contempt of court.
  - (c) Information, the disclosure of which would cause a breach of privilege of Parliament or State Legislature.
  - (d) Information including commercial confidence, trade secrets, or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the Competent Authority is satisfied that larger public interest warrants the disclosure of such information.
  - (e) Information available to a person in his fiduciary relationship, unless the Competent Authority is satisfied that larger public interest warrants the disclosure of such information.

(f) Information received in confidences from a foreign Government.

(g) Information, the disclosure of which would endanger the life or physical safety of any person or identity of the sources of information or assistance given in confidence for law enforcement or security purposes.

(h) Information which would impede the process of investigation or apprehension or prosecution of offenders.

(i) Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries, and other officers.

(j) Information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual.

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

(3) Finally, PIO can reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

(4) The Act also does not apply to the Intelligence and Security Organizations specified in Second Schedule to the Act. However, pertaining to allegations of corruptions and human rights violation in these organizations is not excluded.

### **Third Party Information**

(1) Third Party means a person other than the citizen making a request for information, and this includes a public authority.

(2) If the information sought by the citizen pertains to a record or part thereof relates to or

has been supplied by the third party and if it is not treated as confidential by that third party, the PIO is at liberty to provide the same to the applicant.

(3) If, however such above information is treated as 'confidential' by that third party, the following steps have to be taken:

- \* The PIO gives a written notice to the third party, within five days of receipt of the application, and conveys his intention to disclose the information or record, etc. He also asks the third party to make a submission regarding whether the information should be disclosed or not.

- \* The third party should, within 10 days from the date of receipt of notice from the PIO, make a representation against the proposed disclosure.

- \* The PIO can, within 40 days after the receipt of application for information if the third party has been given an opportunity to make representation, make a decision on disclosure.

- \* Third party is entitled to prefer an appeal against the decision of the PIO.

(4) Except in the case of trade or commercial secrets protected by law, disclosures in such cases may be allowed, if the public interests in disclosure outweighs the importance of any possible harm or injury to the interest of such third party

(5) If the third party is a private individual, the PIO has to be very cautious and properly weigh the consequences as right to privacy of private individual is equally important and protected.

### **Rejections and Steps Involved**

(1) The PIO is required under the Act to either provide the information on payment of the

requisite fee or reject the request within 30 days of the receipt of the request.

(2) Grounds on which the PIO may reject the request for information are enumerated in Secs 8 and 9 of the Act

(3) Where a request has been rejected, the following steps are to be taken.

(a) Within 30 days of the receipt of the request the PIO will communicate the decision to the person making the request along with:

- (i) The reasons for rejection.
- (ii) The period within which an appeal against such rejection may be preferred (within 30 days of the date of the rejection)
- (iii) The particulars of the Appellate Authority.

(b) Within 90 days from the date on which the decision should have been made or was actually received a second appeal can be preferred with the concerned Information Commission.

(c) If a third party is involved the concerned Information Commission shall give a reasonable opportunity of being heard to the third party.

(d) The onus to prove that a denial (i.e. rejection) of a request was justified is totally and exclusively on the PIO.

(e) The decision of the Information Commission is binding.

#### **Delay and Incomplete Information**

(1) In case of delay in providing the requisite information to the person seeking it or the information provided is incomplete, such eventualities would attract basis for appeal.

(2) In view of the above, the PIO, has to be a good Manager of time and also a good

negotiator. He should be able to manage the time in such a way that in no case, he faults in time for providing information ( by exceeding prescribed time limits). He should display his negotiation skills with the person seeking information, with his colleagues to obtain information for dissemination and also with third party, if required.

(3) The PIO, in addition to maintenance of special registers for receipt of requests for information and disposal, has also to develop checklists to keep a check on the pendency and/or completeness of the information provided.

#### **Appellate Authority / Information Commission**

(1) The PIOs should be well conversant with the powers and function of Appellate Authority and the Information Commission as vested under the Right to Information Act.

(2) While conveying information or rejecting request for information; while conveying the fee amount to be paid, etc., the PIO would indicate the right to appeal and the details of the Appellate Authorities to the applicant. This would pave the way for appeal to be preferred and getting themselves ready for meeting the requirements of the Appellate Authorities.

(3) If the Information Commission arrives at a decision to levy penalty, it would give a reasonable opportunity to hear the PIO before the penalty is imposed. The PIO has, therefore, to prepare himself/herself to justify the action taken by him and prove that he acted reasonably and diligently. This needs to be supported by documentary evidence.

(4) The PIO keeps public interest as paramount. When it comes to private interest vis-à-vis public interest, it may not always be possible for him to distinguish between the two and then take a view whether information sought is to be

provided or rejected. The line between the two interests is thin and could be a difficult situation for the PIO to face.

(5) The concerned Information Commission shall impose penalty, if it opines that the PIO has without any reasonable cause:

- (i) Refused to receive the application for information or
- (ii) Not furnished information within the specified time or
- (iii) Malafidely denied the request for information or
- (iv) Destroyed the information which was the subject matters of the request or
- (v) Obstructed in any manner in furnishing information.

The penalty would be Rs.250 per day till the application is received or information is furnished, with a ceiling that the total amount would not exceed Rs.25,000.

### **Consolidation and Monitoring**

(1) The final responsibility of monitoring implementation of the Act rests with the Information Commission and the Government. This requires maintenance of proper data of all applications, appeals, and how they had been dealt with. It is, therefore, necessary that the PIO in particular, follows clear processes and systems.

(2) To start with, the PIO may maintain Special Registers for all Inward and Outward movements, checklists to keep a tab on the timely disposal of application, etc.

(3) Government has a duty to compile, from its public authority, data pertaining to requests received for information and send them to the concerned Information Commission. Only PIOs

can supply details of the number of requests received by each public authority, the number of rejections and appeals, particulars of disciplinary action taken, amount of fees charged and collected, etc. For incorporation/consolidation in such reports.

(4) The success of monitoring system depends upon the quality and quantity of data maintained and supplied at appropriate time by the PIOs

### **Special Skills of PIOs**

(1) The Public Information Officer plays a pivotal role in the implementation of the Act. The various provisions of the Act expect minimum skill to be possessed by the PIO in various areas.

(2) The PIO should have complete knowledge and experience of office procedure. He should have adequate knowledge of records management prevailing with the public authority.

(3) The PIO needs to know the structure and delegation of powers within the organization. He should be well versed with organization chart, levels of disposal of cases, etc.

(4) The PIO should be good in negotiations with the public, colleagues, third party and others so that he could attend to his duties smoothly.

(5) Most importantly, he should be good at managing time. The work of PIO is additional to the work he performs as an officer of the public authority. He should be able to apportion time available with him on various activities entrusted to him. Availability of inadequate time cannot be the basis for delay in disposal of requests for information or for supply of incomplete information.

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*Courtesy - R.T.I Cell YASODA*



# CONSTITUTIONAL AND LEGAL FRAMEWORK OF THE RIGHT TO INFORMATION IN INDIA

On 16th December 2002, the Bill for Freedom of Information was passed after several changes were made for its improvement. The Bill is in accord with both Article 19 of the Constitution as well as Article 19 of the Universal Declaration of Human Rights. The Bill would help bring about a fuller and meaningful participation of people in governance, which is a prerequisite to parliamentary democracy. In case of provisions of the Official Secrets Bill, which are inconsistent with the Right to Information Bill, the provisions of the latter would prevail. Regarding the penalty for those officials who refuse information, as per the Bill's provisions, that the CCS Conduct Rules would be amended for disciplinary action against such officials. However as we would learn as we move along to implement the Bill and make improvements with the passage of time. Out of 200 countries, only 20 have laws for Freedom to Information.

Bill will enable the citizens to have an access to information on a statutory basis. With a view to further this objective, the Bill specifies that subject to the provisions of this Act, every citizen shall have right to freedom of information. Obligation is cast upon every public authority to provide information and to maintain all records consistent with its operational requirements duly catalogued, indexed and published at such intervals, which may be prescribed by the

appropriate Government or the competent authority. The Bill provides for appointment of one or more officers as Public Information Officers to deal with requests for information.

## **The Indian Penal Code 1860**

Though the Indian Penal Code 1860 does not deal explicitly with a citizens Right to Information as the Indian Evidence Act 1872 does, it however contains various provisions which have close bearing on the responsibility of a public servant to provide correct information to the public, failing which the public servant concerned is liable to punishment for his acts of omission and commission in this regard.

The Section 21 of IPC defines a public servant to include such categories of persons as every commissioned officer in the military, naval or air force of India, every judge, every officer of a Court of Justice, every juryman, assessor or a member of Panchayat assisting a Court of Justice or public servant, every arbitrator or other person to whom a cause or matter has been referred for decision or report by a Court of Justice or by any other competent public authority, every person who holds any office by virtue of which he is empowered to place or keep any person in confinement, every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring

offenders to justice, or to protect public health, safety or conveniences, every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, every person who is by virtue of his office discharges responsibilities in the conduct of election, and moreover every person who receives pay, remuneration or commission from the Government or from a local authority or corporation established by or under a Central, Provincial or State Act or a Government Company as defined in Section 617 of the Companies Act, 1956.

The Section 167 (Public Servant framing an incorrect statement) mentioned under Chapter IX (Of Offences by or relating to Public Servants) of IPC 1860 has provided for punishment of imprisonment upto 3 years or fine or both against a Public Servant for framing an incorrect statement or making a wrong translation of a statement with the intention of causing injury to any person.

Under the circumstances, a genuine concern for making the action of State transparent before the people calls for not only a suitable, prior amendment of the outdated Service Rules before the Bill is enacted, but also incorporation of the aforesaid provision of IPC 1860.

### **Indian Evidence Act, 1872**

The Evidence Act 1872 in its Section 74 provides a sweeping definition of public documents, which consist of documents forming the acts or records of the acts of the Sovereign Authority. And as per the said Section, the expression, Sovereign Authority covers within its fold all official bodies and tribunals, public officers of legislative, judicial and executive organs. Further the Evidence Act in its Section 76 (certified copies of public documents) says, every public officer having the custody of a public document which any person has a right to inspect, shall give that person on demand a copy of it on payment of the

legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

The same Evidence Act in its Sections 123 and 124 makes the citizens right to information absolutely discretionary on the part of the Government servants. However, the clear and bold acknowledgement of peoples right to information, copy and inspection of public documents vis-vis all the agencies of sovereign authority, as mentioned under the Sections 74-76 of Evidence Act, is as a matter of fact, unparalleled elsewhere in the legal literature of India.

S. 123 - Evidence as to affairs of State : No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer as the head of the department concerned, who shall give or withhold such permission as he thinks fit.

S. 124 - Official communications : No public officer shall be compelled to disclose communications made before him in official confidence, when he considers that the public interest would suffer by the disclosure.

Keeping these provisions of Evidence Act in tact, the proposed enactment of Right to Information either at State level or at Central level would turn out to be an exercise in futility.

### **Official Secrets Act, 1923**

This notorious, foul smelling piece of colonial legislation, which remains in force to-day

with all its anti-people rigor views the people and Government servants without exception, as the potential agents of the foreign enemies, who are, as if, out to give away the official secrets to the outsiders, and who, on being caught, need be sternly punished under the various provisions of the Act. Not to talk of communication, even mere fact of keeping an official document with himself by an official or non-official person, not authorized to keep it, is considered an unpardonable offence inviting the prescribed punishment of 3 years of imprisonment or fine or both. A token excerpt from Section 5 of the Official Secrets Act, as mentioned below, shall suffice to indicate the tenor of the remaining substance of the Act:

"If any person, retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof, he shall be guilty of offence under this section."

Needless to say, the Official Secrets Act 1923, which was largely instrumental in institutionalizing the mechanism of secrecy in the system of governance of the country over the years and continues to feed to this day, the all-pervasive culture of secrecy in the day-to-day transaction between State and citizens, deserve to be abrogated lock, stock and barrel, so that a genuine effort can be initiated towards making the business of governance open, accountable and transparent in true sense. Otherwise, every case of enacting Right to Information in the State or at Centre is bound to meet its doom as soon as it is given effect to under the overwhelming influence of the Official Secrets Act 1923.

#### **Central Civil Service Conduct Rules, 1964**

The Officers of All India Services, working under the State Governments, are

required to abide by the Central Civil Service Conduct Rules 1964, which in its Section 11 forbid the unauthorized communication by a public servant to the citizens and considers it a punishable offence. In view of this, how can the enactment of a Right to Information law in the States or at the Centre improve the state of transparency in governance before the citizens ?

#### **Manual of Office Procedure for the Central Government**

As per this Manual, only Ministers, Secretaries and other officials specially authorized by the Minister are permitted to meet the representatives of the Press and to give them information. In case of any dispute concerning the unauthorized communication, the Principal Information Officer of Government of India is the final arbiter.

Keeping the Minister at the head of the information regime and living the matters relating to information to the discretion of the Minister means dividing the system of governance of an inbuilt and inherent mechanism to freely and timely respond to and interact with the citizenry day to day, which is the hall mark of a democratic polity. Unless and until the existing top down system of information administration as ordained by the manual of office procedure is replaced by a system in which every layer of governance is equally transparent, responsive and accountable to the citizens in their respective spheres, no enactment of Right to Information law would be able to effect a modicum of change in the present situation of secrecy and suspicion.

#### **Constitution of India**

The most formidable obstacle to the implementation of a Right to information law in the States and country comes from the Constitution itself it defies human reason as to how

a visibly anachronistic arid anti-people article i.e. oath of secrecy found place in the third Schedule of the Constitution and is still being tolerated to this day without any compunction, the like of which is noticed nowhere in the democratic world. The Article 75 (4) of the Constitution makes it binding on every Minister before entering into his office to swear by an oath of Secrecy, which reads as follows:

I, Swear in the name of God that I will not reveal to any person or persons any matter, which shall be brought under my consideration or shall be known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister.

As is well known, in the typical Indian system of Parliamentary Democracy, a Minister is both a member of legislature and a head of the executive in respect of the portfolios he holds. When a Minister, the head himself vows in the name of God to maintain secrecy of official information from the people, how can the rest of the executive i.e. the Government servants whom he heads and leads for all practical purposes, be expected to disclose official information to the people just for the sake of a piece of legislation, called Right to Information or Freedom of Information Act ? Over and above, there are Conduct Rules, Codes and Manuals for the Government Servants, as already examined by us, which bind them to the observance of strict secrecy of official information from the public.

The National Commission to Review the Working of the Constitution (2000- 2002), which submitted their 1800 and odd page Report to the Prime Minister on 31st March 2002 have therefore observed inter alia.

Much of the common man's distress and helplessness could be traced to his lack of access

to information and lack of knowledge of decision-making processes, which vitally affect his interest. Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases because of the latter's snobbish attitude and bow-wow style. Right to information should be guaranteed and needs to be given real substance. The traditional insistence on secrecy should be, in fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent and participatory.

The Oath of Secrecy apart, the Indian Constitution is replete with provisions, which are just uncritically borrowed from its colonial predecessor Government of India Act 1935, and legitimize and reinforce by the full backing of the supreme law of the land, an obsolete and nefarious regime of administrative secrecy, that is squarely incompatible with a democratic polity of modern times. Such immunitarian provisions of the Constitution as guaranteeing a special manner of Protection to the Permanent Civil Service of the colonial style (Article 311), Privileges of the Legislators ( Article 105 for MPs and Article 194 for MLAs), Security of tenure to the Judges (Article 124 for Supreme Court Judges and Article 217 for High Court Judges), and above all Legal Protection to the President and Governors (Article 361), which together make the citizens stare at the key functionaries of the State with awe and wonder, and which give a free hand to these functionaries to deal with them as they like without being directly accountable to them, do also contribute indirectly but substantially to the maintenance of a regime built upon secrecy, red-tape, corruption and alienation from the people.

Unless and until the Constitution is rid of its colonial self and remade in such a manner as to place the citizen at its center-stage, with all the organs of power being directly accountable to him and his every day life, no piecemeal enactment of Right to Information can bring about the much desired elements of transparency, responsiveness and accountability to the governance of the day, over which the whole nation cries hoarse.

### **Judicial Accountability : Human Rights**

The judgments and orders of the Indian Supreme Court are available publicly. Yet India's sharp legal minds are never asked about Supreme Court orders, which have rejected *habeas corpus* petitions and directed that alternative remedy be availed of in the district court.

When people disappear after being taken by the police and their relatives invoke constitutional rights to life and liberty and also approach the apex court, they are simply told to go back and approach the lowest court of their district. That nullifies not only the entire chapter of fundamental rights, which is supposed to be the jewel of the constitutional crown, but also the entire legal evolution; of the writ of *habeas corpus*. There are also situations when the apex court simply folds its hands because the high court in the Capital itself will not comply with the Supreme Court's direction that a *habeas corpus* petition ought to be heard expeditiously.

What usually happens is that the lawyer concerned files an affidavit stating the manner of the high court's refusal to comply. But the subsequent silence from the apex court makes mockery of the *habeas corpus* remedy.

When the apex court is on vacation, lawyers with *habeas corpus* petitions are simply told that this is not among the list of priority categories drawn up by the apex court. A Sheela

Barse protesting against the casual speed with which, the apex court judges deal with vital issues affecting the life and liberty of children, simply gets thrown out as a petitioner and supplanted by the judge-controlled Supreme Court Legal Aid Committee.

The question is what have the successive attorney-generals of India, who defend India's record before UN Committees, done about this in the very court. Where they have their offices ? If an attorney general says that he does not know about all this then is he fit to hold that office ? But the special UN committee members never ask such a question.

The cloak of ignorance, deliberate or otherwise, has suited the interests of many attorney-generals and of the political interests that have vaulted them to the position they hold. This is evident in the fact that despite the idea of a human rights center having been constantly mooted, no attorney general has thought it fit to even raise this as an issue with his political masters. An attorney general drumming up public support for human rights or the Indian constitutional concept of social, economic and political justice, is a distant dream. But no international human rights agency raises the question why India's attorney generals have failed the Indian people.

There are important Supreme Court judgments on arrest, under trial prisoners, legal aid, prison rights, handcuffing. All these have come about without probing the failure of the executive magistracy and the judicial magistracy, of the high courts and their publicly funded legal aid committees. Those who have been interacting with the police well know their ignorance of these Supreme Court pronouncements. Despite a NICNET computer satellite system from the Supreme Court to the districts, this ignorance continues.

High courts administer the district courts but are not held accountable for the efficient implementation of apex court judgments by the district and sessions judges. Successive attorney-generals of India have done little about their preemptive right of audience in courts and their special constitutional right to address Parliament. But no UN Human Rights Committee questions an Attorney General about the large-scale non-implementation of the Supreme Court's own judgments.

All this means that the people of India are being deprived of their human rights. There is also no attention paid to the positive human rights mandated by the Constitution as primary in the governance of the country, with corresponding provisions in the International Covenants on Civil, Political and Economic Rights.

As a consequence, the attorney-general's office has been reduced to that of being an extension of the Government of India. The tragedy is that UN international monitors permit this to go on under international covenants to which much lip service is paid. In the process, international human rights are reduced to a charade.

### **Freedom of the Press & Freedom of Information**

These freedoms are the bedrock of democracy. In a majority of national Constitutions freedom of the press is guaranteed in specific terms. It is felt that our Constitution should also expressly include freedom of the press and the right to information as guaranteed fundamental rights in Part III. As pointed out above, the Right to Know and the right to information have been

spelled out by the Supreme Court in S.P. Gupta's case. (S.P. Gupta & others. v. President of India & others, AIR 1982 SC 149)

### **Inclusion of Judicially Deduced Fundamental Rights in Part III of the Constitution**

As a result of judicial decisions certain fundamental rights, which are not explicitly mentioned in Part III of the Constitution which guarantees fundamental rights, have been inferred or deduced from the specified guaranteed fundamental rights. These judicially deduced fundamental rights are:

Freedom of the Press; (Ramesh Thappar vs. State of Madras, 1950 SCR 594; Brij Bhushan v State of Delhi, 1950 SCR 605. Bennett Colemann & Co. v Union of India, AIR 1973 SC 106)

Freedom of Information; (S.P. Gupta & Others vs. President of India and Others AIR 1982 SC 149)

Instead, why not we mention in Art. 19 that all citizens shall have the right to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas regardless of frontiers.

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(Source: Prof. A. Krishna Kuamri, Dr. MCR HRD Institute of A.P. Hyderabad)

*Courtesy : RTI Cell : YASODA*



## CONSTITUTIONAL PROVISIONS AND JUDICIAL PRONOUNCEMENTS ON FREEDOM OF INFORMATION

Constitution of India guarantees various fundamental rights to its citizens. One such important right is - Right to Freedom under Article 19. This includes right to freedom of speech and expression, to assemble peacefully and without arms, to form associations and unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, and to practice any profession, to carry on any occupation, trade or business. Before 44th amendment, there was also a right "to acquire, hold and dispose off property" under Article 19(f), but the same was omitted by this amendment in 1978. Instead, an article was added as Article 300A by the same amendment to the effect that no person shall be deprived off his property saved by Authority of Law. The effect of this amendment is that now the right to property is no longer a fundamental right under the Indian Constitution.

Article 19(1)(a) says that all citizens shall have the right to freedom of speech and expression. This right is available only to a citizen of India and not to foreign nationals. This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to

an offence. There has been lot of discussions and disputes leading to Court cases on this Right to Freedom. In one of the earliest judgments, pre-censorship of the press was held to be unconstitutional (Ramesh Thapar Vs. State of Madras, (1950) S.C.R. 594; Brij Bhushan Vs. State of Delhi, (1950) S.C.R, 605). Similarly, there has been lot of differences of opinions regarding indecency and immorality as to what constitutes indecent literature or other expressions through media. Similarly, the law of sedition under section 124A of the I.P.C. was also subjected to dispute in Kedarnath Vs. State of Bihar, A. 1962, S.C. 955, when Supreme Court held the validity of this provision.

Under the Freedom of Speech and Expression, there is no separate guarantee of freedom of the press and the same is included in the freedom of expression, which is conferred on all citizens (Virender Vs. State of Punjab, A. 1958, SC. 986 and Sakal Papers Vs. Union of India A.1962 S.C. 305). It has also been by this judgment that freedom of the press under the Indian Constitution is not higher than the freedom of an ordinary citizen. It is subjected to same limitation as are provided by Article 19(2). It has been held by Court in the above cases that press is not immune from paying taxes, from following labour laws, regulating services of the employees, law of contempt of the Court, law of defamation

and with respect to regulation of commercial activities of a newspaper.

Further restrictions have been imposed on the freedom of speech and expression by Article 51A defining fundamental duties of a citizen (42nd Amendment in 1976). Under Article 51 A, no one should in exercise of the freedom of expression or of the press do any of the following acts: -

1. to disparage the constitution, its ideals and institutions, the National Flag or the National Anthem;
2. to undermine the sovereignty, unity and integrity of India;
3. to disrupt the spirit of common brotherhood among all the people; and
4. to insult the rich heritage of our composite culture.

It has been held by the Supreme Court that right of speech and expression includes right to acquire and import ideas and information about the matters of common interests (Hamdard Dawakhana Vs. Union of India (1960) 2 S.C.R. 671) and to answer any criticism leveled against one's views through any media [LIC Vs. Union of India, A. 1993 S.C.171 (para 8)]. This freedom also includes right to impart and receive information through telecasting [Ministry of Information Vs. Cricket Association, (1995) 2 S.C.C. 161]. It also includes publication of advertisement and commercial speech [Tata Press Vs. MTNL (1995) 5 S.C.C. 139]. It also covers right to hold telephonic conversation in privacy [PUCL Vs. Union of India (1997) 1 S.C.C. 301]. It is thus quite clear that right to acquire and get information is a fundamental right under the Indian Constitution. But what type of information it includes? Obviously, not all types of information, but only the information relating to matters of

public or common importance affecting people in general. Till now, most of the Government Departments were denying information to the public under the Official Secret Act. But various judgments quoted above have given this right to people and it will no longer be possible for Government to deny such information unless it does not concern the public at all.

Further, the preamble to Indian Constitution says as under: -

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

This will show that in democracy it is the people who are supreme. It has been rightly said that democracy is a Government of the people, for the people and by the people and it is the people who are the sovereign in a democracy. People have a right to choose and elect their any representative to Parliament, State Assemblies and Local Bodies for a fixed period, and in some countries people have a right even to call them back if they do not perform their functions properly. Since the Government is elected by the people in India, they have a right to know how the Government is functioning and whether their problems are being attended to by the Government effectively. Without right to information, people will not be in a position to



know what is happening and thus to take further steps in the direction.

In one of the earliest judgments [Romesh Thapar Vs State of Madras (1950) SCR 594], the Supreme Court observed as under: -

".... (The freedom) lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse...(but) "it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits".

In the same judgment, the Court held (paragraph 68) that the public interest in freedom (of discussion of which the freedom of press is one aspect) stems from the requirement that members of the democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves. In an English case - Attorney General Vs. Times Newspaper Limited [(1973) 3 ALL ER 54], it was held that freedom of expression, as learned writers have observed, has four broad social purposes to serve: (i) it helps an individual to attain self-fulfillment; (ii) it assists in the discovery of truth; (iii) it strengthens the capacity of an individual in participating in decision-making; and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration."

In a recent case of Vineet Narain Vs. Union of India (1998) 1 ACC 226 (Pg. 510), the Supreme Court held that considering the wide spread illiteracy of the voters and at the same time there over-all culture and character they need to be well informed about the candidate contesting election as M.P. or MLA so that they are in a position to decide independently to cast their votes in favour of more efficient candidates.

The right to get information in a democracy is recognized in all the countries. It is a natural right flowing from the concept of democracy [Article 19(1)(2)] of the International covenant of Civil and political rights, of which India is a signatory, speaks as under: -

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Several decisions of the Supreme Court make it clear that under Article 19(1)(a) of the Constitution, freedom of speech and expression includes voters speech for expression in choosing their candidate. Therefore; information about the candidate such as their educational qualification, criminal background, assets and financial liabilities, is to be given to the voters to choose a better candidate. Article 10 of the European Convention of Human Rights also states as under: -

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

In one of the early decisions in the case of State of UP Vs. Raj Narain and Others [(1975) 4 SCC 428], the Supreme Court of India considered a question whether privilege can be claimed by Government of UP under section 123 of Evidence Act in respect of Blue Book summoned from the Government of UP and certain documents summoned from SP, Police, Raibareilly, UP. The Court observed that -

"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing."

In a recent case of Secretary, Ministry of Information & Broadcasting, Government of India Vs. Cricket Association of Bengal [(1995) 2 SCC 161], the Supreme Court observed in para 82 as follows: -

"True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they" are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic organizations. This is particularly so in a country like ours where a majority of the population is illiterate and hardly 1½ per cent of the population has an access to the print media which is not subject to pie-censorship."

In another recent case of Dinesh Trivedi, M.P. and Others V. Union of India and Others [(1997) 4 SCC 306], the Court dealt with citizen's rights to freedom of information and observed as under :-

"In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare. Democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant."

There is a practice followed in United States of America, where a candidate contesting election for Senate has to fill up a form giving information about all his assets and that of his spouse and dependents. The form is required to be refilled every year; a penalty is also prescribed which include removal from voting. In India, however, all the political parties do not want to disclose any such information.

Regarding definition of a public servant in case of P.V. Narsimha Rao V. State A(CBI/SPE) [(1998) 4 SCC 626], the Court considered whether MP is a public servant and observed as under -

A public servant is "any person who holds an office by virtue of which he is authorized or required to perform any public duty". Not only, therefore, must the person hold an office, but he must be authorized or required by virtue of that office to perform a public duty. Public duty is defined by section 2(b) of the said Act to mean "a duty in the discharge of which the state, the public or that community at large has an interest". In a democratic form of government it is the Member of Parliament or a state Legislature who represents the people of his constituency in the highest law making bodies at the center and the

state respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the center and the state shall be spent and in exercising control over the Executive. It is difficult to conceive of a duty more public than this or of a duty in which the state, the public and the community at large would have greater interest."

From the above, it will be seen that freedom of speech and expression includes right to collect information and to disseminate it. This freedom is necessary for self- fulfillment as it enables people to contribute to debate on social and moral issues. The right to get information in a democracy is recognised all over and it is a natural right flowing from the concept of democracy.

The Indian Freedom of Information Act 2002 was finally passed by both the Houses of the Parliament in December 2002. Under this Act, it is obligatory upon every public authority to provide information and maintain records, consistent with its operational needs. These records will have to be duly catalogued and indexed and published at such intervals as may be prescribed by an appropriate government or the competent authority. The legislation seeks to promote openness, transparency and accountability in administration.

Recently, one of such rights which came to limelight was right of people to know about the antecedents of a candidate contesting elections - specially about their criminal background, educational qualifications and their properties and assets. In a public interest litigation filed by Association of Democratic Reforms [Union of India Vs. Association for Democratic Reforms & Ann, JT 2002 (4) SC 501], the Supreme Court directed the Election Commission to require the persons contesting elections to give such

information. It was felt that this information would help the people to choose good, sincere and honest persons to the legislatures.

Even in day to day life of the people, they have right to know what is happening to their applications made to the Government Departments, how much time it will take to process them and if rejected, reasons for such a rejection. Though, internal instructions have been issued by various Government Departments laying down a time frame for disposal of such applications, but in actual practice, it is not being adhered to. Even Departments like Passport Office which has developed a website for the purpose, it is not always possible to know where one's application is pending. Thus, there is a need to have separate legislation on right of information of the people based on Article 19 of the Indian Constitution so that deliberate and unnecessary delay does not take place in disposal of the work, affecting the people. It will also help in cutting down delays and reduce corruption in various Government Departments.

### **Expectations of the Society :**

Immediately after the Independence the citizens of our Country were full of zeal, energy and were beaming with high moral values and patriotic feelings for the all round national progress.

Such feelings did wonderful job and the developmental pace was just too good. The planning and execution was superb. The situation of the "nature against the mankind" was controlled. The nation became food surplus with the green revolution. But of late after 1980's the situation started deteriorating. The overall deterioration of the quality whether in production, services, civic administration, health etc. started showing its effects in the late 1990's. Many of the State Governments had become Bank Corrupt

and still are in precarious financial position. The unholy nexus between the Criminals, Politicians and some of the highly placed public servants resulted into drain on State Exchequer. The relationship was so complex, interwoven and intertwined, that it has now the lawbreakers have become lawmakers.

The Corruption had started eating the vital/ethos of the fabric of the Society. The worst hit was the low-income group, the villagers and the middle-income group.

The funds meant for rural development though utilised on record for developmental schemes were siphoned off. The medicines sent to the Hospitals/dispensaries disappear and never reach the intended section of the society. The farmer is in financial mess forced to commit suicides. The Power Sector is running into massive losses due to theft & pilferage by the section of society having political and muscle power.

The common citizen is on cross roads and does not know where to go.

Today all of us whether a Public servant or the common citizen all of us curse the lack of civic amenities, lack of governance and ever increasing corruption because all of us at one or the other stage have to face these harsh realities in one or the other manner. Today all of us are fed up with the system as is evident from the following instances:

1. The Health Board had carried out a scheme for immunizing children in Gauri's district. Gauri and others of here district heard about the scheme on the radio. However, no children were immunized in the district. When they asked the health of officers for details about the scheme, such as how many children had been immunized, how much medicine had been brought to the district and how much was given to children, they

were refused the details saying that the health board was under no duty to tell anybody anything.

2. A journalist saw news items, which said that in a particular village several children had died of diahorrea. She went to the village to investigate the matter in order to bring out a detailed report. When she visited the homes of the children who had died she came to know that the children had died of starvation. When she asked the health authorities to give the details of the deaths and the disease of which the children had died, they refused to give her the details saying that this was a confidential matter.

3. The people of a locality had been going to the local ration shop for two weeks to get their share of the sugar and rice. Every time they were told that the rice 'had not come and the sugar had been distributed. After several such responses, the people asked to see the register of the supply and distribution of the rations. The person at the shop got furious and started abusing the people. He said he was under no obligation to maintain or show them any register.

4. Shabbir and Sunil had given their names in the employment exchange five years ago. Every time they asked the officers about their position, they were not given any clear reply. Then they come to know that Shankar, who had the same qualifications but had registered after them had been given a job. They demanded that they should be shown the rolls. The employment exchange refused, saying that this was official information and could not be shown to anybody.

5. Many senior government officers and politicians had been staying in government houses long after their terms were over. Some were not even paying the rent. A Parliamentary Committee was formed to look into the matter. When some journalists asked for the list of names of persons

in illegal occupation of the houses, the Committee replied "this is confidential information, no-one is supposed to know this."

6. Ramlibai inherited some property from her father. She wanted to transfer it to her name in the land records. Someone disputed her claim and the Tehsildar asked her to get the old records of the land. She applied to the office of the land records but the records were in such a bad condition that she could not get them. The officials said that they could do nothing about it.

These responses are not new to any of us no matter where we are. It happens in the village, in towns, in cities and even in the capital of the country. Whenever we ask for any information from any public body, we are generally refused saying that it is a part of secret records, or that it is confidential or that it just cannot be given. Most people continue to believe this and accept this as correct.

However, what most people do not know is, that we have a right to know most of the things about the functioning of government and other public bodies. We have a right to know what work is being undertaken by these bodies and how, how much money is being spent and on what. This is called the Right to Information.

In a democracy, we form the government for us, through our elected representatives. All government and public work is carried out for us, with our money. For the work to be done in

accordance with our needs we must be able to take part in the decision making. For this we need to know details of the work. For instance, the people of Rampur have a right to know how the decision to make the bridge was taken and how much money has been allocated for it. This is called participation.

Government takes many decisions, which affect our lives in many ways. We have the right to know about the things, which affect us. If everybody openly knows the details and the expenditure of any project or work, the chances of corruption are minimized. This is called transparency of government.

Government is for the people and is not above the law. If things are not done properly, then the Government can be held responsible. If the bridge made in Rampur collapses, people have a right to know who was responsible for it and what action is taken against that person. This is called accountability.

To know decisions, be informed on issues, ask for accounts, know details of various things and hold people responsible for their acts, we need information.

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Contributed by Mr. B.P. Srivastava, I.R.S. Member, Customs and Central Excise Settlement Commission, Principal Bench, New Delhi.

*Courtesy : RTI Cell : YASODA*



## RIGHT TO INFORMATION ACT - PANACEA OR PAPER TIGER ?

Citizen's Rights are a major indicator of a country's progressiveness and human development. Though the Indian Constitution got off to a roaring start with a bunch of awesome sounding fundamental rights, the right to information (RTI) was not one of them. Citizen's rights are, in a sense, an abridgement of the corresponding rights and authority of government. The non-inclusion of RTI as a fundamental right, therefore, preserved the traditional, unquestioned right of government to maintain secrecy in its functioning by taking shelter under an Official Secrets Act (OSA) including the discretion to decide what is official and what is a secret (A Hitler joke : A German who called Hitler a fool was prosecuted on two counts - one, abusing the Head of State and two revealing a state secret).

Growing public concern about callousness and corruption in government resulted in a clamor for greater transparency culminating in a demand for an RTI Act. The Consumer protection law created and strengthened the notion of citizens as consumers of government services. The Mazdoor Kisan Shakthi Sanghatan (MKSS) movement in Rajasthan was a turning point in the RTI Movement and showed that even illiterate, socially mute and exploited laborers could assert and get their other rights conceded by invoking the RTI. The Government of India,

based on the recommendations of the Chief Secretaries' conference on "responsiveness in government," appointed the Shourie Committee to review the OSA and suggest a draft RTI Bill. The draft, called the Freedom of Information Bill 2000 has been passed into Law. Seven State Governments had already passed their own versions of RTI Acts.

In practice, most information requirements can be categorized as follows :

<b>As</b>	<b>From</b>
Citizens	Government & Elected Representatives
Voters	Candidates & Elected Representatives
Consumers	Producers & Sellers
Clients	Professionals
Stake Holders	Corporates
Social activists	All the above

A citizens' RTI should, therefore, cover not only the government but also those activities of private organizations and individuals mentioned above which are likely to be of legitimate concern to citizens, or have an adverse impact on public resources or welfare. This is reflected in the stringent disclosure requirements under the

Consumer Protection Act, Environment Protection Act, the Companies Act, etc. However, most individual professionals, such as doctors and lawyers, communicate cryptically and condescendingly or not at all, and almost never voluntarily, with their clients. In fact Indian professionals have always regarded their expertise and judgment as beyond question by lay mortals and even by courts and considered it *infra dig* to be brought under the Consumer Protection Act.

### **Possible Scenario**

Let us consider possible scenario in an average citizen's interaction with the government under the RTI Act. An imposed system can be resisted and killed by an entrenched bureaucracy by three methods - overuse, disuse and hide - and - seek.

First, overuse, The RTI Act provides for an elaborate system of written application, acknowledgement, time limit, appeal, etc. In actual practice how many will have the time, patience and stamina to go through the whole gamut of such procedures if it is insisted upon in every case? In other words, the bureaucracy's may hit back by a too literal and procedurally rigid implementation of the Act and defeat its purpose. The bureaucracy's real power is the citizen's urgency, the high opportunity cost of delay and the high transaction costs of repeated visits to the office. The strategy of a hostile bureaucracy will be to make the total cost of a corrupt approach appear to be less than that of a statutory approach.

Now killing by disuse, though it is about two years since seven State Governments passed their own RTI Acts, very few in and outside the government seem to know, much less care, about the Act's existence or operation; and there is no information on whether the Act has been invoked,

if so, in how many cases, by what categories of citizens and with what results, (Karnataka has an RTI Act, Yet even the Tamil Nadu Government is unable to get reliable information on Cauvery flows). Even if the Act is invoked by citizens and requests filed, they could easily be delayed to the point of their death.

Finally, hide - and - seek. A lot of information about government schemes, policies, achievements, etc. is already published in the form of reports, publicity material, budget documents, five year plans, etc. A lot of information is also placed on the table of the legislature in the form of annual administration reports, audit reports, replies to questions, etc. Giving this type of information will not present any difficulty. The problem arises, as it did in the case of the MKSS. When a citizen or an NGO wants to look in the internal documents and notings to see whether there has been any avoidable delay or impropriety. Sensation mongering media and politicians may be interested in knowing the views expressed by officers and ministers on the files. It is to guard against this type of inquisitiveness that the whole government culture is carefully and consciously oriented towards a single, overriding value - whatever the truth, under no circumstances shall the government appear in an adverse or embarrassing light in public eyes. The tendency for lower level officers would be to reject, or push up to higher levels, most requests under the Act in order to avoid being blamed later.

The Official Secrets Act (OSA) has neither been scrapped nor even circumscribed confining its application to precisely defined, specifically listed and genuinely secret matters. The OSA is better known and already in force whereas the RTI Act is yet to take off. If both Acts co-exist, Gresham's law may force the latter to remain a paper tiger.

Use of muscle power by politicians and misuse of legal power by the State against persons fighting doggedly for their rights or exposing irregularities in government is now a reality of our politics and administration. No doubt, any citizen, poor or rich, educated or illiterate, can file a writ petition for getting any of his fundamental rights enforced - that is, provided he does not get beaten up or get acid thrown on his face on his way to the court. These days invoking the Right to Information act to ask for information which may get powerful people into trouble is likely to attract physical retaliation. This can, therefore, be attempted only by strong NGOs with an established reputation and wide mass support like the MKSS or politicians with countervailing muscle power, and not by ordinary citizens however patriotic and public-minded they might be. Even under the most progressively drafted RTI Act, can we imagine an ordinary citizen ever feeling safe to walk into a police station and demand factual information on the detenus, duration of custody, prescribed documentation, etc. This is the area crying for the RTI Act to produce some real impact. This is also the area where the maximum resistance to disclosure from the bureaucracy and the political executive will be faced.

At this stage, the reader might ask Is the RTI Act, then, useless as the administrative ambience and culture are not conducive to its effective implementation ?

Laws are the crystallized symbols of a civilized, democratic society's values amid a last resort remedy if other approaches fail. They set the tone for social behavior, deter potential delinquents, penalize actual delinquents and remedy wrongs to some extent. It is a fact that their mere existence has, to some extent at least, prevented more violations and that in their absence the situation, bad as it may be, would certainly

have been worse. The RTI Act, a much needed piece of legislation, will in practice suffer the same limitations as other laws. But since it activates the exercise of many other rights, it is not enough to have the Act passed and lean back waiting for miracles to happen. It is necessary to create a conducive environment as well as systematic support so that the Act comes alive as an accessible, effective tool of improved citizen's interaction with the government.

### Remedies

Possible remedies for the anticipated difficulties in the working of the RTI Act are

- \* In order to minimize the need for citizens to frequently invoke the Act, the government should be required under the Act to embark on large-scale simplification and demystification of its systems through technology and decentralization, and periodical, suo motu disclosure of all information relevant and useful to citizens (as is required of corporates). What this information should be could be finalized in a workshop involving active citizen groups.
- \* The OSA should be amended confining its operation to specified matters genuinely affecting the security of the country. These provisions should be the sole exceptions under the RTI act.
- \* Internal notings and memos need not be exempted under the Act though the public servants concerned should be protected from resultant malignment or litigation if any. The idea of open files (i.e. government files being open to inspection by any citizen who has a legitimate proximate interest therein) should be tried out as a pilot experiment and expanded.



- \* Bona fide disclosure under the RTI Act shall not be punished even if it is subsequently held that this was wrong. As a logical extension, a whistle-blowers protection act should be enacted providing immunity from penal action to public servants who, with a bona fide intention of serving the public interest, are left with no choice but to disclose information on perceived misgovernance.
  - \* A citizen's RTI should cover not only government departments but also corporates, professionals and legislators in matters to be specified in the Act in respect of each. While legitimate professional autonomy, business risks and constitutional privileges should be respected, these should not entitle any category to blanket exemption from the RTI Act.
  - \* Grievances in regard to non-supply of the requested information should be sorted out on the spot by the highest officer in the same office instead of being converted into formal complaints or appeals and referred to some distant office.
- Necessary empowerment of officers should be done.
- \* Information Technology should be used, wherever appropriate and feasible not only to make government systems transparent to citizens but also to speed, them up.
- \* Special mechanisms to deal with genuinely urgent requests for information - if necessary within 24 hours - have to be created and monitored.
  - \* Providing information should not be made unduly expensive or considered a source of revenue.
  - \* Existing consumer courts may function as appellate authorities in cases of refusal to supply information under the RTI Act.
  - \* A balance has to be struck between one person's right to privacy and another's right to information. The former has normally to be protected unless the balance of public interest lies in disclosure. Such situations should be listed out as far as possible and the authorities competent to make this trade-off judgment specified in the Act itself.
  - \* Citizen's power to exert and sustain legitimate pressure is the crux of good democratic governance. Knowledge is power and information is the seed of knowledge. RTI is, therefore, nothing but the observe of people's right to good governance.
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- P.K. Doraiswamy is the Former Special Chief Secretary, Government of Andhra Pradesh
- (*Courtesy* : RTI Cell YASODA)



## SOME INITIATIVES OF THE BUREAUCRACY

In India, some of the most practical moves for enforcing the right to information have arisen surprisingly from the much-maligned quarters - from members of the bureaucracy and the politicians. This has been possible despite the consistent hostility of the executive in general to transparency, and the fact that the bureaucracy as a whole is deeply corroded by corruption and nepotism.

In India, a few progressive elements in the bureaucracy have often been marginalised. Bureaucrats who attempted to change things and took firm stands against corrupt practices have been routinely transferred out to 'punishment postings' and disempowered. Some attempted to change things in innocuous ways like setting right the system of records, but these exercises were centred around individuals and lasted only until the new entrant. The public remained at the mercy of chance benevolent administrators in the absence of institutionalisation of accountability mechanisms.

Some experiments that bear mentioning are the ones using Information Technology to revamp the system of recording information. As far back as 1985, the District Collector of Karwar District in Karnataka, one of the Southern states, diverted funds meant for a jeep in order to purchase a microcomputer which was successfully used as an analytical tool. In the first year after

adopting this system, the district went up from being the 18th to the 3rd in the success rate for implementing development programmes. The success of this programme was in its replication to other districts as a formal programme named CRISP (Computerised Rural Information Systems Project).

Likewise, in Ahmednagar District of the state of Maharashtra, a Collector revamped the whole records system, allowing the public to get copies of documents and to inspect records easily. This system resulted both in speedy disposal of public grievances as well as a far more professional work environment for the office clerks.

With the wildfire growth of Information Technology, these ideas for accessing information are being given much stress and huge programmes for networking rural districts to enable people to access information are being carried out. The most notable among these is the one taken on by Chief Minister of Andhra Pradesh, another Indian state, by linking through computers all the rural regions. This is being done by setting up information kiosks at the taluka level where anybody can have access to desired information from the government. Of course, these experiments in using information technology will pose their own problems in terms of the quality of information made available. For these could well boil down to furtherance of government propaganda and as much can be

hidden as revealed. Advocates of the right to information need to keep an eye on all these aspects and ensure that transparency is carried to its logical conclusion and the sources of the information and the generation of information is made equally transparent.

While these experiments were hailed as experiments in good administration, the really dynamic experiment in recent years has been one carried out in one of the Divisions of India's largest state, Madhya Pradesh. This process, as we shall see was not a mere exercise in logistics, but contained strong conceptual and ideological elements which helped later to spur a movement in the entire state, resulting in wide ranging administrative reforms for openness.

The Commissioner sought to systematically introduce transparency in certain key departments like the Public Distribution System, the Employment Exchange, and the Pollution Control Board.

The Public Distribution System in rural India is one of the most corrupt networks, beset with hoarding, supply of sub-standard food grains to the public, illegal sale of the allotted quotas in the open market, and almost always manned by rude and unresponsive persons who make people queue for hours for days on end to receive their share of the basic necessities. Into this cesspool of corruption which daily threatened the food entitlements of the most poor, a system was put into place whereby each outlet was required to send certified copies of the Stock Register, the Sale Register and the Ration Card Register and to these to the Tehsil office. From this office, any person could secure certified copies on demand within 24 hours to personally investigate what grains had come, and to whom these were distributed, installing photocopiers at the tehsil offices was made mandatory. This was made cost-effective by buying photocopiers for handicapped persons through a governmental

scheme, thereby generating employment as well as adding to administrative efficiency. A deadline was laid down for adherence to this system and a system of fines was established at all levels for delay in following the system.

Likewise, the Employment Exchange was required to give details about the criterion and procedure for selection to any government position, and the detailed merit list, on demand by any person.

Bilaspur Division is also home to Korba, one of the most polluted areas in the country due to multiple and uncontrolled industrialisation. The administration realised that pollution levels could not be brought down without the active participation of the public. The Pollution Control Board of this area was therefore required to collect and publish daily in the local newspapers, details of the various pollutants in the area, along with the levels of pollution, and a citizens committee was trained and authorised to check the veracity of the readings.

Predictably, this whole exercise soon ran into trouble with the local power groups, and the officer whose brainchild it was, was transferred out of the area. To briefly enumerate the fallout of this exercise: Although the experiment has often been referred to as a 'failure by some quarters in that the number of information seekers was negligible and in that the system collapsed with the exit of the Commissioner, in the duration that the orders for right to information were in operation, the deterrent effect of transparency to corruption and inefficiency became only too apparent. The food grain shops recorded unprecedented excess stocks, as the distributors could no longer oblige local politicians and goons by diverting the stocks to them and to the black market. They even remarked, "the people's right to know has become our right to "no"! Pollution levels showed a marked decline and the daily publication of pollution levels encouraged the

public to take an interest in their environment and to question the levels of pollution.

While cynics had a field day criticising the experiment on all fronts ranging from the standard change of it being 'impractical' to not feasible financially, the ground had been well prepared and the seeds sown for sweeping acceptance of the right to information in principle in the entire state of Madhya Pradesh.

Since this was an experiment carried out *pro bono*, it found many supporters who could look beyond the teething troubles and sense that here was an answer to many ills to which many cures had earlier failed. It was this realisation that spurred the Chief Minister of the state, himself a professed crusader for decentralisation of power and transparency and accountability, to attempt an enactment for enforcing the right to information. The attempt was, however, axed by his cabinet. There are unofficial and amusing reports of the horror and dismay of the ministers at the very idea of complete transparency in the working of government. The whole attitude was one of "either this law remains or we remain". Political considerations obviously warranted a backtracking on the move. However, the next move of the State government demonstrates how political will can push reforms through even in adverse circumstances and how spaces can be created starting from a tiny wedge.

While in a neighbouring state, the People were fighting tooth and nail (the MKSS campaign) for a governmental order to get photocopying rights in one sphere of government, that of the Panchayats. The government of Madhya Pradesh surprised all campaigners for the right to information by handing out a veritable bouquet of rights of access to government records in the form of executive orders to 37 departments of the state government. These broadly included the departments of Public Works, Panchayats and Rural Development, Urban Development, Dairy

Development, the Public Distribution System, Jails, Social Welfare, Co-operatives, Tribal Welfare Forests, to name a few. The Chief Minister declared his commitment to transparency saying "transparency is essential because it is the basis of Democracy... This will go a long way in establishing a vibrant administration, a vibrant society and a vibrant nation. That is why we are telling people before they start asking.

The process followed by the government was strategic in that it attempted to follow the line of least resistance and thereby got through much more than it could have hoped to by forcing it on a reluctant and hostile bureaucracy. "We asked the officials to enumerate all those categories of information which were easily available with them and which could be given without any extra burden on the administration. This has enabled us to give the reforms a practical shape. Gradually, we expect a change in the mindset as people get used to the idea and then we can always expand the areas for giving information. We felt that it was better to give something rather than deny everything".

The whole process was moderated by the department of General Administration which, as the name suggests, is responsible for the overall efficiency and functioning of the administrative structure and also for reforms of this structure. The broad pattern of the orders is a directive to provide photocopies or rights of inspection for certain categories of documents enumerated in the order itself, "for a mass campaign against corruption through the right to information". The orders prescribe a minimum fee for inspecting the documents and formats for requests for inspection and photocopies. While most of the fee structures seem reasonable, there are some departments where the fee structure suggests that it would act as a deterrent to information seekers, who may most likely be from disadvantaged classes such as those living under the poverty line.

These orders were not issued because of any apparent public pressure or movement, though it is likely that development in other parts of the country, particularly pervasive public revulsion at corruption in high places, egged on the political masters and the bureaucracy to take pre-emptive measures.

The apparent paradigm in the above example was stated to be a genuine desire to bring about a change in the culture of governance and in the absence of evidence to the contrary, this was accepted at face value by the CHRI which proceeded to attempt to create spaces using these openings.

The CHRI's work on the right to information in the state of Madhya Pradesh coincided with the passing of these orders and other developments on the issue in 1997. This gave CHRI a strategic entry point and they used the orders to peg discussion and advocacy around the issue through a series of workshops in the state. Although a year and a half of the operation is, in all fairness, not sufficient to judge the success of the exercise, their findings brought out certain inherent failings which if not addressed soon would nullify the whole exercise or result in the availability of avenues of information to be hijacked by the few to feed their own vested interests.

While the government's orders were enabling for the common person to access much of the information required for everyday concerns, GIRI found that the orders were not backed by any mechanism for publishing the same to the public. A government publication (*Jaanane ka Haq*) containing the texts of the orders was printed and circulated to the press and whenever the government required political mileage out of it. This publication, even a year and a half later is not freely available, leaving the lay public unaware of the orders. The government claims to have given press statements' regarding these orders, but these have also been sporadic and no

sustained campaign through the press or the electronic media has been planned or executed. Even otherwise, with a literacy rate as low as 43.45%, and many of the areas being tribal belts with poor accessibility to any means of communication, these efforts are hardly likely to be effective.

There is no concrete plan to sensitise or orient bureaucrats and public servants at all levels to the new regime of transparency. There ought to be immediate and forceful introduction of the issue of right to information at all orientation and training programmes carried out by the state academy for administration which conducts programmes for government officials. Interaction with some of the lower bureaucracy revealed that to them the implications of the directives on right to information had no relevance to public dealing and some even considered that these were meant to allow them access to their own service and leave records, etc.

The second drawback detected was the lack of accountability mechanism for enforcement of the orders. While many of the orders stipulate mandatory putting up of notice- boards and periodical mandatory release of information, reports from different parts of the state suggest that this has not been done. While the government in the state capital has devised a system of monitoring the implementation of the orders through a format which the District Collectors are required to submit every month, after compiling the information on implementation . Reporting is poor and out of the 61 Districts, only 33 are reporting. Others are being given reminders. This is an obvious indication of the lack of teeth in the orders. Senior officials say that this can be remedied only by a law on the subject which will bring the errant officials to book.

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(*Courtesy* : RTI Cell YASODA)

## RECORDS MANAGEMENT AND FREEDOM OF INFORMATION

The Right to Information refers to the right of every citizen of the state to access information under the control of public authorities consistent with public interest. The main objective of providing information is not only to promote openness, transparency and accountability in administration but also to ensure participation of people in all the matters related to governance.

It is during the last decade that a large number of countries have begun enforcing legislations to provide access to government information. The World Bank, the International Monetary Fund and other international funding agencies are also pressing countries to adopt access to information laws to increase government transparency and reduce corruption. Citizen activists in USA and Japan have harnessed the respective right to information laws there to expose corruption in government departments and local bodies and elicit information on hazardous drug manufacture or environmental degradation. There has been a slight setback especially in the USA since the terrorist strike of September 11, 2001 and additional restrictions are being placed on disclosure of certain information.

Article 19 of The International Covenant on Civil and Political Rights (ICCPR), signed among others by India, defines the parameters of people's right to information. It lays down that

every citizen shall have the right to freedom of opinion and expression, which shall include "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice." The covenant has at the same time placed 'reasonable restrictions' on this right only to the extent of safeguarding 'rights or reputation of others' and protecting national security or of public order, or of public health and morals.

A series of Supreme Court verdicts have recognized that the right to know is inherent in Article 19 (1) (a) of the Constitution of India, which guarantees that 'all citizens shall have the right to freedom of speech and expression'. A citizen has a fundamental right to information so as to formulate and express his or her views. Citizens' fundamental right to know is further strengthened by Article 21 which guarantees the right to life and personal liberty and by Article 14 which guarantees the right to equality, since all stakeholders must have an access to facts affecting their lives. The Apex Court ruled in 1982 : "The concept of an open government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1) (a)". Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception.

\* Every public authority shall maintain all its records, in such manner and form consistent with its operational requirements duly catalogued and indexed.

\* A person desirous of obtaining information shall make a request in writing or through electronic means, to the concerned Public information Officer specifying the particulars of the information sought by him. Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing.

\* Where a request for access to information is rejected or the concerned applicant is aggrieved, the citizen has a right to appeal.

### Records Management

#### What are records?

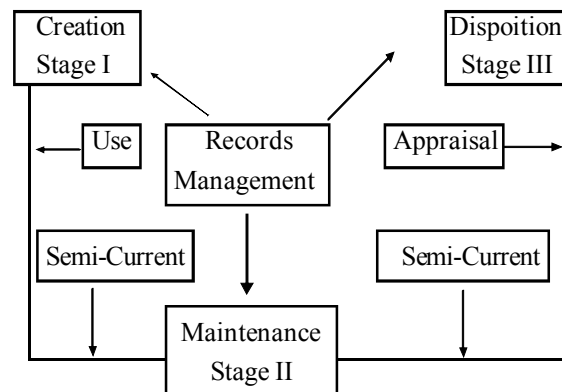
There is sometimes a lack of clarity about what is meant by 'records' in relation to the more general term 'information'. There are many definitions of the term 'record'. However the most convenient and wide ranging definition is "records include all the documents that institutions create or receive in the course of administrative and executive transactions". The records themselves form a part of or provide evidence of such transactions. As evidence, they are subsequently maintained by or on behalf of those responsible for the transactions. While all records convey information, not all sources of information are necessarily records. For example, a published book or an externally provided database (on or offline) will not be a record, although information selected from it and reused in a new context may itself become a record.

Records arise from actual happenings; they are a 'snapshot' of an action or event. They

offer a picture of something that happened. To serve their purpose in providing reliable evidence for greater accountability, records in both paper and electronic form must be accurate, complete, and comprehensive. While most records do not need to be kept permanently, a small but significant portion have enduring value.

#### What is Records Management?

Records management is "the field of management responsible for the systematic control of the creation, maintenance, use and disposition of records". Records management addresses the life cycle of records, i.e., the period of time that records are in the custody of the Government agencies. The life cycle usually consists of the three stages given below:



The table below describes the various phases shown above in the diagram including the degree of records management activity involved.

Phase	Activity	Comments
Creation/ Receipt		Records are created or received and captured into a record-keeping system.
Maintenance and use	High	Records are being used for the business purpose for which they were created.
Semi-current	Medium	Records are stored and maintained for reference purposes

Appraisal	Low	Survey methods and retention schedules are used to appraise records for their value
Disposal	Very low/ Nil	Records are destroyed or sent to Archives.

(Source : Based on Records Management Manual, DTI, 2000)

Records management is concerned with the effective management of records throughout their life cycle. There are several benefits of having an effective records management programme. These are listed below:

- \* Facilitates effective performance of activities throughout an agency
- \* Protects the rights of the agency, its employees and its customers
- \* Provides continuity in the event of a disaster
- \* Meets statutory and regulatory requirements including archival, audit and oversight activities
- \* Provides protection and support in litigation
- \* Allows quicker retrieval of documents and information from files
- \* Improves office efficiency and productivity
- \* Supports and documents historical and other research

### Records Management and Freedom of Information

In order to make sure that information is available to the citizens as and when it is requested for, every Government office must have proper record management systems in place. The importance of records management with respect to freedom of information can be summarized as follows.

The effectiveness and efficiency of the public service across the range of government

functions depends upon the availability of and access to information held in records. Badly managed records adversely affect the broad scope of public service reforms, and development projects are often difficult to implement and sustain effectively in the absence of good record management practices.

There is a strong relationship between the objectives of the Government and the records required for the delivery of services by its officers. Table below shows the relationship between the objectives and the records required for achieving them.

<b>Governance Objective</b>	<b>Key Records Required</b>
Rule of Law	Legislative records, court records, police records, prison records
Accountability	Accounting records, procurement records, tax records, customs records, electoral registers, policy files, case files.
Management of state resources	Budget papers, policy files accounting records, personnel records, payroll records, procurement records, fixed asset registers, property registers.
Protection entitlements	Pension records, social security records, land legislation records, birth / death records.
Services for citizens	Hospital records, school records, environmental records.
Foreign relations & international relations	Treaties, correspondence with national and international bodies, loan agreements.

To make sure that the Government is documenting its functions, it is very important to have good record management systems in place.



In essence, for the Government to be able to fulfill any of the above governance objectives, it needs to make sure that it has effective records management systems in place by keeping the right records available. There is no point in having Right to Information Bill without there being proper availability of records. Even if the citizen is given access to records he/she might find it difficult to obtain the required information from the plethora of records available with the Government. In order to understand the current reality of the record management systems in Andhra Pradesh, the current state of affairs with respect to records management systems are summarized below.

In most Government offices, record management systems are either non-existent or are not adequate. The record rooms in district collectorates were comparatively better administered than the record rooms in Zilla Parishads and Head of Departments. A lot of work needs to be done in improving record keeping systems in government offices. To be more precise the concept of records management has completely been forgotten in most government offices. The pictures below illustrate the state of record rooms in Andhra Pradesh.

Record Rooms in many Government offices are typical dust bins, seen as garbage outlets by the men in authority, and all and sundry items are dumped in these rooms. Record keeping systems are weak or have actually not been effectively put into use by the departments. Though classification of records and their management in record room in the paper mode form is laid down in District Office Manual, over a period, the system collapsed to the point where they barely function. Informal practices supplanted formal rules, and efficient public administration was of secondary importance to providing employment. While the civil service expanded steadily, bringing with it a corresponding increase

in the flow of paper, more formal ways of working gradually collapsed, often replaced by *ad hoc* work methods, in many cases, the administrators got used to making decisions without referring to records. There was little incentive to maintain effective record keeping systems or to allocate adequate resources for records storage and staff. In some cases, the failure to create and maintain records systems was motivated by the desire to conceal financial and other irregularities. Eventually, the registries stopped acting as the point of entry for able recruits and became dumping ground for staff without career prospects. The staff had limited training or experience with record keeping work, and record keeping was allowed to deteriorate.

File classification and indexing systems originally designed to meet the record keeping requirements of the British administration could not meet the needs of complex needs of development oriented modern governments.

Despite the low usage of records, there was an extreme reluctance to destroy records, even after they ceased to have any value to the institution. In the absence of rules and guidelines for what should be kept and for how long, staff were reluctant to authorize destruction. Over time, registries became severely congested with older records. Ultimately, many records systems collapsed under their own weight. Even as record keeping has declined, there have been important advances in the field of records management in Europe, USA, and Australia.

Record keeping has deteriorated so gradually that it has gone largely unnoticed as a development activity. Administrators did not recognize the need and necessity to establish a good record management system and the connection between the breakdown of record systems and the problem of public administration.

Development planners tend to assume that the problem is so prevalent, ingrained, and thankless that little can be done to improve the system. On the contrary, there is an assumption that computers will resolve record keeping problems, which is a very misplaced assumption.

Government of India enacted an Act to regulate the management, administration and preservation of records. There is no such legislation in AP to monitor, maintain and manage public records. Maintenance of public records in AP is far from satisfactory. In order to streamline the record management practices and keeping in view, the intention of the Government to guarantee the right to information to its citizens the Public Records and Archives Management Bill is a must and every Government office must take steps to revamp their record management systems.

This Bill proposes to establish the records and archives management department to provide for proper administration and better management of public records and archives throughout their life cycle. It is necessary to improve the arrangements for the life-cycle management of public records and archives of the Government of Andhra Pradesh as an essential component of effective administration and accountable Government. It is important to ensure that public offices create adequate records for their actions and transactions and those records are properly maintained for so long as there is a continuing need for them.

At the same time it is important to provide for the disposal of those records for which there is no further need in an authorized and timely manner and to identify and safeguard those records which are of enduring value and which should be preserved as archives and made available for public consultation.

Government of India enacted the, the 'Public Records Act, 1993' and 'Information Act,

2002", both these Acts lay down the principles for managing, maintaining and monitoring records in Government departments.

The "Public Records Act, 1993" assigns a range of responsibilities to the records officer in relation to proper arrangement, maintenance and preservation of public records under his charge. The records officer must undertake:

- \* Periodical review of all public records and weeding out public records of ephemeral value;
- \* Appraisal of public records which are more than twenty-five years old in consultation with the National Archives of India or, as the case may be, the Archives of the Union territory with a view to retaining public records of permanent value;
- \* Destruction of public records in such manner and subject to such conditions as may be prescribed under sub-section (1) of section 8;
- \* Compilation of a schedule of retention for public records in consultation with the National Archives of India or, as the case may be, the Archives of the Union Territory;
- \* Periodical review for downgrading of classified public records in such manner as may be prescribed;
- \* Adoption of such standards, procedures and techniques as may be recommended from time to time by the National Archives of India for improvement of record management system and maintenance of security of public records;
- \* Compilation of annual indices of public records;
- \* Compilation of organisational history and annual supplement thereto;

- \* Assisting the National Archives of India or, as the case may be, the Archives of the Union territory for public records management;
- \* Submission of annual report to the Director General or, as the case may be, head of Archives in such manner as may be prescribed;
- \* Transferring of records of any defunct body to the National Archives of India or the Archives of the Union Territory, as the case may be, for preservation.

Apart from the above main responsibilities, the Records Act details several other aspects of the role of the records manager.

After the passing of the Information Act and Records Act by Government of India, the need to revise the entire process of records management has arisen. The current systems are not geared to handle the function of records management effectively and efficiently. With the passing of the Information Act, the right to get information from the public authority is ensured by the Statute. This obligation to share information with the citizen adds additional responsibility on the public officers to manage, maintain and monitor records efficiently and effectively.

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*Courtesy* : RTI Cell YASODA

#### **WELSPUN TO SET UP STEEL & PIPE PLANT IN ORISSA**

The State Government has signed a memorandum of understanding (MOU) with Gujarat-based Welspun Power and Steel Limited (WPSL) for establishment of a three million tonne steel and pipe plant with an investment of Rs.6103.8 cr.

The MOU was signed between Secretary in the Steel and Mines Department Shri L.N. Gupta on behalf of the State Government and Vice-Chairman-cum-Managing Director Shri B.K. Goenka of WPSL. Hon'ble Chief Minister Shri Naveen Patnaik said that the project would be executed expeditiously. He also underlined environment protection and periphery development.

The State Government expects Orissa will gain substantial benefits not only on direct taxes front but also employment front through establishment of downstream and ancillary industries. Minister for Industries, Shri Biswabhusan Harichandan, Minister for Steel and Mines Shri Padmanabha Behera and Chief Secretary Dr. Subas Pani were present. The State Government also signed an MOU with Welspun Anjar SEZ Limited for establishment of an integrated textile park (ITP) at Choudwar. The company will develop about 400 acres of land and set up, among other facilities, a modern spinning mill of 25,000 spindle capacity and a weaving mill. The company will invest Rs.300 crore over a period of three years up to 2009-10 either by itself or by directly-controlled subsidiaries. The Chief Minister said the ITP would boost industrialisation around Choudwar and provide employment to the local people. The plant will also encourage utilisation of fine cotton grown in KBK region, he expected.

## RIGHT TO INFORMATION — A STUDY

The Right to Information refers to the right of every citizen of the state to access information under the control of public authorities consistent with public interest. The main objective of providing information is not only to promote openness, transparency and accountability in administration but also to ensure participation of people in all the matters related to Governance. Right to Information is a very effective tool in the hands of citizens to make the objectives of Good Governance (SMART) realizable.

Right to access information held by public bodies is a fundamental human right, protected under constitutional law of India. It is accepted by supreme court that Right to information is an inherent part of Right to Freedom of Speech and Expression under article 19(1)(a) and the Right to Life and Personal Liberty under article 21 of the constitution. But then, the question arises why we need a separate law for freedom of information when there is a constitutional provision. In spite of Constitutional Provisions, Which guarantee fundamental rights we have not been able to create a culture and climate where values of freedom, rights and a democratic way of life are respected. One of the purposes of making laws like the right to information, which is primarily a human right, is to help create this culture. Hence Right to Information must be guaranteed by a strong legislation and the process of law-making itself must be participatory.

In this direction the union government recently enacted the Freedom of Information Act 2002. Despite the right to information bill having received presidential approval seven months ago, citizens may have to wait some time, before they can exercise their right to access government files, as the concerned authorities are yet to set a timeframe for framing the rules. Some states like Goa, Tamilnadu, Karnataka, Rajasthan, Delhi and Maharashtra have also passed Right to information laws, how ever there is criticism that the working has not been satisfactory.

### **THE NEED FOR RIGHT TO INFORMATION**

#### **(a) Ensures people's participation**

Since most of the governmental works are carried out for the people, people must be involved in the planning process and must know exactly how things are being done. To participate in planning processes and judgment of whether certain plans and schemes are useful for them or not, people must have sufficient information about the nature of the projects and programmes. This will enable them to give their opinion well in time for required changes or modifications. This will reduce project costs and will increase project outputs manifold.

#### **(b) Ensures Principle of accountability**

Ours is a democratic system of governance in which the government is run for

the benefit of the public at large and not for the benefit of one person or a few persons. Governance from the village to the central level therefore has to be accountable to the people. People have a right to know what the government is doing. A Right to Information will ensure that people can hold public bodies accountable on a regular basis, without having to lay the entire burden on their elected representatives who are themselves often unable to get the information sought in spite of all the resources at their command.

### **(c) Transparency**

There is a presumption that everything that is done by the government is done for the public good-which means, it is done to further the objective of public well-being, is done honestly with optimum benefits from the funds used. However, as we all know, in recent times, this presumption has been eroded to a great extent by misuse, misappropriation and also careless use of public funds. To counter this, it is essential that there should be complete transparency in all public dealings. This is bound to bring about a more careful utilization and application of funds. Transparency will also help people to hold the officials accountable for their mishandling of public time and money. Transparency would go a long way in helping to expose the corrupt and allowing the honest to do their jobs without fear or favor.

### **(d) Limiting the discretion powers given to Officials**

Officials can abuse their discretion to suit various political or other vested interests, as well as to misappropriate funds. In absence of legislation on Right to information they tend to be hidden from disclosure. Although it is possible to seek the court's intervention to compel disclosure of this information, in practice this is not possible for poor people or villagers, given the cost, distance and delays involved. Another problem

is the lack of transparency regarding selection for public posts. The selection of inappropriate employees in to the government adds to the inefficiencies and ills in the government. The right to information is therefore important to check abuse of administrative discretion and to ensure fair process.

### **(e) Protects the Civil Liberties**

The right to information is essential for protecting liberties of citizens by making it easier for civil society groups to monitor wrongdoings like custodial deaths and the abuse of preventive detention legislation. Custodial institutions are some of the most opaque places in the country. Violations in custody range from deaths in custody, keeping convicts in jail long even after they have served their sentences, and abuse of women. Effective community monitoring of these institutions is dependent upon access to information. Some government are even considering providing the right to information explicitly in relation to prisons.

### **(f) Effective and Proper Implementation of Schemes of Government**

In rural areas, numerous schemes for providing food, housing, employment and education are run by the central and state government. These schemes are meant for the poorest of the poor in the rural areas. There is wide spread criticism that these funds have been routinely misappropriated or misused on a large scale. In most cases, people do not know about the existence of these schemes, even if they know they do not get their entitlements under the scheme, paving the way for them to accept less than their allocation. Furthermore, records are often tampered because no one outside the administration has access to them. By providing entire information on these schemes to the public would make the administration more accountable.

**(g) Makes media more effective**

Even if the government provides for the right to information, the citizens resort to media like newspaper, radio, television etc for day to day information about government activities. The media provides a link between the citizens and its government. So, it is essential that media is able to access information. The media's right to information is not a special privilege but rather an aspect of the public's right to know. The lack of a right to access official information causes many problems for the media. Balanced reporting becomes difficult when the primary sources of information are denied. In absence of exact information, they provide biased news, suppressing or distorting information. By providing right to information, media and citizens would together make the government more accountable.

**GLOBAL PERSPECTIVE**

Freedom of information, including the right to access information held by public bodies, is protected under international and constitutional law. Authoritative statements and interpretations at a number of international bodies, including the United Nations (UN), the Commonwealth, the Organization of American States (OAS) and the Council of Europe (CoE), as well as national developments in countries around the world, amply demonstrate this.

In 1946, during its first session, the UN General Assembly adopted Resolution 59(1) which stated "Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated". The importance of freedom of information, including the right to access information held by the State, has been recognized by the Commonwealth for more than two decades. The Council of Europe (COE), an intergovernmental organization is composed of 43 member states. One of its foundational documents is the European

Convention on Human Rights (ECHR) which guarantees freedom of expression and information as a fundamental human right in Article 10. In US in 1985, the Inter-American Court of Human Rights, interpreting Article 13(1), recognized freedom of information as a fundamental human right which is as important to a free society as freedom of expression.

In a number of countries, freedom of information, including the right to access information held by the State, has been recognized at the constitutional level, either by courts which have interpreted general guarantees of freedom of expression as including it, or through specific constitutional provisions recognizing it.

Now, over 40 countries have comprehensive laws to facilitate access to state records; over 30 more are in the process of enacting such legislation. In Western Europe, only Germany and Switzerland lack legislation. Nearly all Central and Eastern European countries have adopted laws as part of their democratic transitions. Almost a dozen Asian countries have either enacted laws or are in the process of doing so. Similarly, in South and Central America, several countries are considering laws. Many countries in southern and central Africa are following South Africa's lead, with varying proposals for formulating freedom of information laws.

In Asia, Philippines recognized the right to access information held by the State relatively early, passing a Code of Conduct and Ethical Standards for Public Officials and Employees in 1987. A Code on Access to Information was adopted in Hong Kong in March 1995, and in Thailand, the Official Information Act came into effect in December 1997. In South Korea, the Act on Disclosure of Information by Public Agencies came into effect in 1998, and in Japan, the Law Concerning Access to Information held by Administrative Organs was enacted in April 2001.

Despite this global recognition of the fundamental right to information, to date no State in South Asia has a national freedom of information law giving practical effect to this right. However, change is now very much on the agenda. Superior courts in some countries in South Asia have recognized the right to information as part of the constitutional guarantee of freedom of expression or thought. Civil society groups in all countries in the region are demanding that governments respect the right to information, and pass legislation giving effect to it. These groups have the support of global civil society, as well as of many intergovernmental organizations and the international community generally. They are also deriving increasing support from the people, who are no longer prepared to tolerate corrupt, undemocratic, secretive government.

Governments in South Asia have started to respond to these pressures, and take on board the global recognition of the right to information. Indian Parliament has already enacted Right to Information Act and several Indian States have already adopted freedom of information laws or orders. In Pakistan, a Freedom of Information Ordinance was introduced in 1997, but allowed to lapse shortly thereafter. A similar Ordinance was circulated in 2000, but failed to become law. In both Nepal and Sri Lanka, there has been some official acceptance of the need for legislation and it is hoped that developments currently underway will lead to the adoption of freedom of information laws.

September 11 attacks have actually led some countries to limit information access. The restrictions have been most profound in the United States and Canada where proposals to limit national and local freedom of information acts have been adopted. In the UK, implementation of the long-awaited information act has been delayed until 2005.

The rapid proliferation of freedom of information laws in countries in all regions of the world is a dramatic global trend and one of the most important democratic developments of recent times. The use of the right to information will be able to contribute to solve many social and cultural problems of the countries like India as it is one of the main human rights that protect and develop the human life.

### **POSITION OF INDIA AND INDIAN STATES REGARDING LEGISLATION ON RIGHT TO INFORMATION**

The passage of the much awaited Freedom of Information Bill-2002 is an important landmark in the history of Indian democracy. The Bill grants statutory right to the citizens to access information from the Government. The legislation is in accord with both Article 19 of the Constitution as well as Article 19 of the Universal Declaration of Human Rights. With the passage of the Bill, India is now among the 20 countries to have legislated a measure, which is in the direction of providing transparency, openness and accountability in government functioning. Despite the right to information bill having received presidential approval ten months ago, citizens may have to wait some time before they can exercise their right to access government files, as the concerned authorities are yet to set a timeframe for framing the rules.

In Indian context, there are essentially two types of information

- \* information to which access must be given upon request; and
- \* information which must be published and disseminated suo motu (proactively) by public authorities, including information which would affect fundamental rights such as food, environment and civil liberties.

The Freedom of information Bill, 2002 provides both information upon request and

proactive publication of certain information in chapter II called Freedom of Information and Obligations of Public Authorities. A government sharing information proactively, without being asked for it, is a true indication of a democratic and transparent society. It marks a paradigm shift from the culture of secrecy to transparency. This proactive role of the state is of special significance to a society like ours, where due to social and educational reasons, many people are not able to exercise a right provided to them.

### Important state initiatives

Inspired and encouraged by the exercises taken up by the Press Council of India, Working Group and the Central Government, the State Governments also yielded under popular pressure and started preparing draft legislation on Right to Information. A number of states have already introduced the Bill on Right to Information, many even before the union has enacted its law.

**Tamilnadu :** Tamilnadu was the first state to set an example by introducing the Right to Information Act on 17th April, 1996. The Bill was modeled on a draft legislation recommended by the Press Council of India. The enacted legislation was full of exemptions and inadequacies, so it has failed to evoke much response from the public and devoted NGOs and other concerned activists. Tamilnadu, the first State of India to pioneer the enactment of such a 'progressive' legislation, has clearly borne out : a Right to Information Act, if not properly formulated following a thorough-going public debate, might turn just into its diametrical opposite i.e. Right to No Information Act. Frontline" editor N. Ram observed that the Tamilnadu legislation, in its prelude, made all the right noises. It was the catalogue of exceptions carried in fine print that made the act an uninspiring model for others to emulate.

**Goa:** Goa was the second State to enact the Right to Information legislation. The act also applies to

private bodies executing government works. Despite tall claims made by the State government regarding transparency and openness to strengthen democracy, Goa Act also ironically contains several peculiar provisions, which allow the State to withhold information without sustaining reasons for it. The Act needs further clarification on the vague exemptions mentioned in it. It was also not clear as to who would be the competent authority to furnish the information. Another major weakness is that it has no provision for pro-active disclosure by government.

**Karnataka:** The Karnataka Right to Information Act (KRIA) was enacted in 2000, and came into effect in July 2002 when the Rules were notified. KRIA requires that once the Competent Authority receives an application under KRIA and if information is being provided, the applicant must be informed of the fees payable within 7 days from date of application. The information must then be provided within 15 working days from date of fee payment. If information is being denied, the applicant must be informed of reasons for denial within 15 working days from date of application. In addition, all offices of public authorities are required to display information regarding particulars of the organization, its functions and duties, details of facilities available to citizens for obtaining information on notice boards outside their offices. The findings revealed that in cases where information has been provided, the applicants had to engage in constant follow-up indicating that systems for implementation of KRIA have not been set up in the public authorities.

**Delhi:** The Government of Delhi has enacted the Delhi Right to Information Act, 2001. The Act has come into force with effect from 2 October, 2001. This law is along the lines of the Goa Act, containing the standard exceptions and providing for an appeal to an independent body, as well as the establishment of an advisory body, the State Council for Right to Information. Many



departments of Delhi government have been brought under the purview of this Act through a notification. In each Department, one officer has been designated as a competent authority. Under this Act, any citizen can approach the competent authority in any of these departments and seek any information on the activities of that department and take copies of documents with some exceptions from the civic body after paying a nominal fee. The corporation has to provide it within a month, failing which the concerned officials could be penalized and are liable to pay Rs.50 per day for any delay beyond 30 days, subject to a maximum of Rs.500 per application. It is also clearly stated that wherever the information is found to be false or has been deliberately tampered with, the official would face a penalty of Rs.1,000 per application.

**Rajasthan:** After five years of dithering, the right to information act was passed in 2000. The movement was initiated at the grassroots level. Village-based public hearings called Jan Sunwais, organised by the Mazdoor Kisaan Shakti Sangathan (MKSS), gave space and opportunity to the rural poor to articulate their priorities and suggest changes. The four formal demands that emerged from these Jan Sunwais: 1) Transparency of panchayat functioning; 2) accountability of officials; 3) social audit; and 4) redressal of grievances. The Bill as it was eventually passed, however, placed at least 19 restrictions on the right of access. Besides having weak penalty provisions, it gives too much discretionary power to bureaucrats. Despite this, at the grassroots level in Rajasthan, following systematic campaigns waged by concerned groups and growing people's awareness of their own role in participatory governance, the right to information movement thrives, it was the Jan Sunwais that exposed the corruption that pervaded several panchayats and also campaigned extensively for the right to food after the revelation of hunger and starvation-related deaths in drought-ravaged districts.

**Maharashtra:** The Maharashtra assembly recently passed the Maharashtra Right to Information (RTI) Bill, following sustained pressure from social activist and anti-corruption crusader Anna Hazare. The Maharashtra legislation has been called the most progressive of its kind. The Act brings not only government and semi-government bodies within its purview but also state public sector units, co-operatives, registered societies (including educational institutions) and public trusts. It provides that Public Information Officers who fail to perform their duties may be fined up to Rs.250 for each day's delay in furnishing information. Where an information officer has wilfully provided incorrect and misleading information or information that is incomplete, the appellate authority hearing the matter may impose a fine of up to Rs.2,000. The information officer concerned may also be subject to internal disciplinary action. The Act even provides for the setting up of a council to monitor the workings of the Act. The council shall be comprised of senior members of government, members of the press and representatives of NGOs. They are to review the functioning of the Act at least once every six months. Exclusion clauses have been reduced to barely ten.

## 5. CONCLUSION

Information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues on political, social and economic front. Free exchange of ideas and free debate are essential for a democracy like India. In this Age of information technology, Right to Information is a critical factor in ensuring country's socio-cultural, economic and political development. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible.

However in India the free flow of information is restricted due to

1) The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923. Although the union government and some state governments have made legislations regarding right to information, most states governments still lag behind.

2) The pervasive culture of secrecy and arrogance within the bureaucracy.

3) The low levels of literacy and rights awareness amongst India's people.

So the first step in making right to information realistic would be to have a comprehensive legislative frame work at both union and state levels. Only making the legislation will not do justice to the information seekers unless it is implemented with strong conviction. Laws by themselves are not adequate. What is needed is that such progressive laws must be backed by people's movement. A law for right to information or Freedom of Information can be made effective only through people's active involvement.

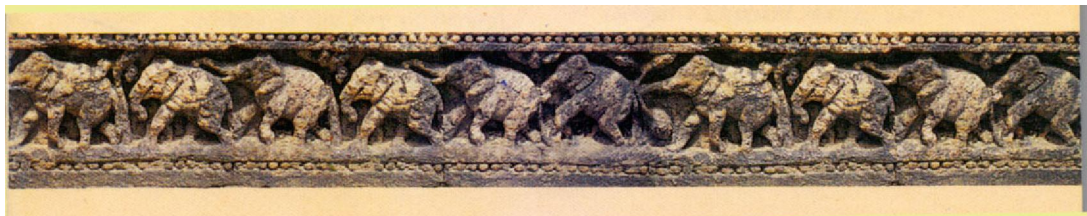
There is a view that there are many pre-conditions which are related to economical, social, cultural and political development for realizing the right to information in a developing country. And unless a country has solved the main problems like hunger, education, health, social security and political freedom, it is not possible to realize the right to information. However there is no harm in passing legislation on Right to information so that the legal pressure is maintained on the government officials to provide information even if asked for by an elite group of people.

The essential requirements of legislation on right of access to information which is in the possession of the state are

1. a right of access which is broadly defined and extends to all the organs, agencies, or departments of the state;
2. a narrow definition, in precise and specific language, of the exemptions to the right of access;
3. statutory language which makes clear that access is to be the norm, and exemptions are to be resorted to only in exceptional cases;
4. speedy processing and disposition of requests for access;
5. independent review of denials of access;
6. minimal or no fees or other charges for the processing of documents requested.
7. The creation and training of a cadre of officials to assist persons making access requests;
8. Wide publicity about the right of access and explanation of the procedures to be followed.

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(*Courtesy* : RTI Cell YASODA)



## DECISIONS OF THE CENTRAL INFORMATION COMMISSION IN THE FIRST YEAR OF RIGHT TO INFORMATION ACT

*Srinivas Madhav*

The Central Information Commission or CIC issued about 540 decision notices between 5 January 2006 and 27 August 2006. Everyone is concerned about the impact of these decisions. How do these decisions influence our most important right that is the Right to Information? What is the essence of these decisions? This is an attempt to present the ratio decidendi of a few important decisions given by the Central Information Commission, in a classified manner for easy understanding. This author has tried to study all the decisions given by the CIC. Few decisions from other countries have been also included for discussion in this paper.

### DECISIONS AND IMPLICATIONS

#### 1. File Notings

The Commission noted with serious concern that some public authorities were denying request for inspection of file notings and supply of copies thereof to the applicants despite the fact that the RTI Act, 2005 does not exempt file notings from disclosure. The reason they were citing for non-disclosure of file notings was that the information posted on the DoPT website [www.righttoinformation.gov.in](http://www.righttoinformation.gov.in) points out that information excluded file notings as per government rules. Thus the DoPT website was creating a lot of unnecessary and avoidable confusion in the minds of the public authorities.

The Commission therefore directed the Secretary, Ministry of Personnel and Public Grievances, in exercise of its powers conferred on it under section 19(8) of the Right to Information Act, 2005 to remove the instructions relating to non disclosure of file notings from the website within 5 days of the issue of this order failing which the Commission shall be constrained to proceed against the Ministry of Personnel.

CIC/OK/A/2006/00154 -13 July 2006

#### 2. Consultation between the President and the Supreme Court

A citizen made a request for securing a copy of recommendations or consultations of any one year during the past ten years submitted to the President of India under article 124(2) of the Constitution on appointment of judges of various ranks in the Supreme Court and High Courts. The CIC concluded that the entire process of consultation between the President of India and the Supreme Court must be exempted from disclosure. Disclosure of the list of candidates prepared by the Highest Court for the purposes of consultation with the President of India attracts the exemption of section 8(1) (e) as well as the provision of section 11(1) of the RTI Act.

CIC/AT/A/2006/00113 - 10 July, 2006.

### 3. Videography

If an applicant wishes to make photocopies of records and samples given to him for inspection at his own expenses, it is not for the public authority to object to the form in which the copies are being made, provided it is restricted under the Act. There is no provision in the Act disallowing videography, and therefore, can not be excluded unless it violates the parameters of any information sought and agreed to be provided.

CIC/WB/A/2006/00144 -- 3 August 2006

### 4. Orders Appointing the Examiners

The Commission directed the PIO of the University of Delhi to provide an applicant the certified copies of the orders appointing the examiners and of the files dealing with his application for re-totalling of marks as requested by him in his application.

CIC /OK/A/2006/00051 - 4 July 2006

### 5. Due Diligence under Section 20 (1)

If the time limits could not be adhered to by the CPIO, then he could have taken the appellant into confidence and kept him periodically posted with the progress of the information gathering process.

CIC/AT/A/2006/00031 - 10 July 2006

### 6. Annual Property Returns

Information in the annual property returns shall be covered by section 8 (1) (j) and can not be routinely disclosed. It will also attract the exemption under section 8 (1) (e) and in certain cases the provisions of section 11(1), being an information entrusted to the public authority by a third person i.e. the public servant filing property returns. On the whole, property returns of the public servants, which are required to be compulsorily filed by a set date annually by all public servants with their respective public

authorities, being an information to be used exceptionally, must be held to serve no general public purpose whose disclosure the RTI Act must compel.

However, all public authorities are urged that in order to open the property returns of all public servants to public scrutiny, the public authorities may contemplate a new and open system of filing and retention of such returns. Public servants may be advised in advance that their property returns shall be open and no more confidential. The property return forms may be so designed as to give only such transactions and assets related details, which may not violate civil servants' right to privacy. These steps may bring the curtains down on the rather vexed question of how private is the information given in property returns or that it is a public information, which is not private at all.

CIC/AT/A/2006/00134- 10 July 2006

### 7. Reasons for Rejection of Requests

Through this order, the Commission now wants to send the message loud and clear that quoting provisions of section 8 of the RTI Act *ad libitum* to deny the information requested for, by CPIOs or appellate authorities without giving any justification or grounds as to how these provisions are applicable is simply unacceptable and clearly amounts to mala fide denial of legitimate information attracting penalties under section 20(1) of the Act.

CIC/OK/A/2006/00163 - 7 July 2006

### 8. Personal Discussion with the Requester

If there was general confusion regarding the kind of information that has been called for and that could have been supplied, it could have been easily resolved by a personal sitting between the appellant and the respondents.

CIC /WB/A/2006/00180 - 5 July 2006

**9. Compensation to the Applicants**

Misbehaviour with applicants approaching public authorities under the RTI is not acceptable and is violative of section 5 (3). In this case the PIO will invite Ms. Dasharathi to visit his office and identify members of his staff who refused to provide her the information. Under section 19 (8) (b) the public authority will pay Rs.100 as damages suffered to the applicant Ms. Dasharathi. This may be either directly or through recovery from the erring officials, as deemed appropriate by the PIO.

CIC/WB/C/2006/00145 -10 August 2006

**10. Language Under Section 2 (f)**

Jai Kumar Jain applied to Delhi Development Authority asking for information in Hindi as he has applied to the PIO in Hindi. The CIC directed the DDA to provide the requested information in Hindi within 25 days of the issue of its decision.

CIC/WB/A/2006/00117- 13 June 2006

**11. Citizen Under Section 3**

PIO can decline information under section 3, if the applicant applies as a Managing Director of a company and not a citizen of India.

CIC/OK/A/2006/00121 - 27 June 2006

**12. Address of the Requester**

The Commission could not agree with the PIO's contention that the information was sought on behalf of an institution. The Appellant has applied in his own name and has only given his address and that of an NGO for the purpose of correct delivery of post. Thus merely giving the address of an NGO does not imply that the institution was asking the information.

CIC/OK/A/2006/00050 - 3 July 2006

**13. Form of Access Under Section 2 (f)**

If the requested information is not available in electronic form as required by the requester, it does not have to be created for the appellant.

CIC/MA/A/2006/0002 - 27 June 2006

**14. Form of Access Under Section 2 (f)**

If the information is not available in the particular form requested, the citizen may be allowed, if he desires, to inspect the original records at the office and information specifically asked for provided in the form of printouts and photocopies of original documents and records duly certified.

10/01/2005-CIC - 25 February 2006

**15. Information Held Under Section 2 (j)**

In this case records of the court martial trial were destroyed after a retention period of 10 years under the Army Rule 146. Information did not exist, it was physically impossible to provide it. There is no liability under the RTIA on a public authority to supply non-existent information.

CIC/AT/A/2006/20 - 23 March 2006

**16. Requester Seeking Opinions of the Authorities**

The PIO is required to 'provide information' which is available in any form with her office rather than giving her personal opinions on the questions asked by the requester. CIC/MA/A/2006/00150 - 19 June 2006

**17. Voluntary Disclosure Under Section 4(1) (b)**

A public authority, is required to make pro-active disclosure of all the relevant information as per provisions of section 4(1)(b) unless the same is exempt under the provisions of section 8(1). In fact an information regime should be

created such that citizens would have easy access to information without making any formal request for it.

24/IC(A)/2006 - 16 April 2006

### **18. Record Management Under Section 4 (1) (a)**

Record management system ought to be improved such that information which are to be disclosed to public could be easily provided after delineating the information that is exempted under the Act.

CIC/OK/A/2006/00016 - 15 June 2006

### **19. PIO and Multiple PIOs**

If multiple number of PIOs are appointed in the same public authority, there is no scope to either ask the citizen to approach another PIO within the same public authority or send the request to another PIO within the same public authority. Only in a case where the information sought is held by another public authority other than the one which has designated her as PIO, she can transfer the request to that public authority for furnishing information to the applicant directly.

ICPB/CI/CIC/2006 - 6 March 2006

### **20. Life and Liberty under section 7 (1)**

On the question of life and liberty, the Commission has ruled as follows in appeal number CIC/WB/C/2006/00066 of 19 April 2006 in Shekhar Singh, Aruna Roy and Others versus Prime Ministers Office:

Matter to be treated as one of life and liberty would require the following :

- \* The application be accompanied with substantive evidence that a threat to life and liberty exists, for example, medical report.
- \* Agitation with the use of Ahimsa must be recognized as a bonafide form of protest,

and therefore even if the claim of concern for life and liberty is not accepted, in a particular case by the public authority, the reasons for not doing so must be given in writing in disposing of the application'.

### **21. Review of a Decision**

A review is permissible only if

- \* there is a technical error in the decision
- \* there was an omission to consider certain material facts relevant for the decision
- \* appellant was not given opportunity of being heard
- \* PIO has not enclosed relevant supporting documents in his comments furnished to CIC.

Review Application No. 1/2006 - 16 May 2006

### **22. Drafting an Appeal**

Appeal should be drafted in a simple and direct manner and must be brief. It should not be unnecessarily long, too detailed and couched in legalese with several repetitions.

CIC/OK/A/2006/00069 - 18 May 2006

### **23. Drafting an Appeal**

No fresh grounds for information can be allowed to be urged at appellate levels, unless found to be of a nature that would warrant their admittance, if the same has not been brought up at the primary level i.e. the PIO level.

CIC/AT/A/2006/00128 - 13 July 2006

### **24. Compensation Under Section 19 (8) (b)**

For the first time, the CIC in its decision directed the Central Government Health Scheme, Pune to pay a sum of Rs.5,000 to the appellant Ms. M.N.Trival as compensation and refund her the sum of Rs.60 paid by her as fee for non-application of mind by both the PIO and AO

resulted in the appellant having to interact with PIO and CIC repeatedly causing mental harassment to her.

Decision number 30/ICPB/2006, 13 June 2006

### **25. Penalty Under Section 20 (1)**

For the first time, Shri Wajahat Habibullah, Chief Information Commissioner imposed a penalty of Rs.25,000 on a PIO for a complaint number CIC/WB/C/2006/00040, 5 June, 2006. PIO has failed to appear before the Commission on due date and time despite a telephone reminder. Because the burden of proving that he acted reasonably and diligently is on the PIO under Provision 11 to Sec 20(1), it is assumed that he has no reasonable cause to show why penalty should not be imposed. Under the aforementioned section of the Act, penalty shall be imposed on any of the following grounds, if the PIO has

- (a) refused to receive an application
- (b) not furnished the information within the time frame specified in section 7(1)
- (c) malafidely denied the request for information or knowingly given incorrect information
- (d) obstructed in any manner in furnishing the information

By not supplying some of the information sought by the applicant as found in the Decision Notice of 23 May 2006, the PIO is in violation of (b) above, and by evading his responsibility to provide the information sought also obstructed the complainant's. He will therefore pay a penalty of Rs.250 for every day subject to a maximum of Rs.25,000.

CIC/WB/C/2006/00040, 5 June 2006

### **26. HOD's Failure to Assist the Commission**

The Commissioner of Municipal Corporation, Delhi has failed to assist (the

Commission, which he was legally bound to do, and he has also failed to explain as to why the orders of this Commission were not executed. It also appears that he has thereby caused an interruption to the proceedings. He has, therefore, committed offences punishable under sections 176, 187, 188 and 228 of the Indian Penal Code. Now therefore, it is ordered as follows:

(i) That the Commissioner, MCD shall appear in person on 18 August 2006 at 10:30AM and show cause

- (a) as to why he be not prosecuted for committing the said offences and
- (b) as to why appropriate action be not recommended against him under section 20 (2) of the Right to Information Act; and
- (c) as to why such further action or actions be not taken as this Commission may deem fit and proper.

(ii) He is further directed to furnish the names and address of the concerned CPIO (s) who were responsible for not furnishing the information to the appellant so as to enable initiation of appropriate proceedings against them.

CIC/WB/C/2006/ 00040, 9 August 2006

### **27. Penalty Under Section 20 (1)**

Commission imposed a penalty of Rs.13,750 on Professor Akhtar Majeed, Registrar, Jamia Hamdard, New Delhi. The Commission further authorised and requested the Vice Chancellor, Jamia Hamdard, New Delhi to cause the recovery of the amount of penalty from the salary of Professor Akhtar Majeed and remit the amount by demand draft or banker's cheque drawn in favour of Pay and Accounts Officer, DP & AR, payable at New Delhi, to Shri Pankaj K.P.

Shreyaskar, Assistant Registrar, Central Information Commission, 4th Floor, Block No.IV, Old J.N.U. Campus, New Delhi - 110067, by 15 September 2006.

CIC/OK/C/2006/00042-28 July 2006

### **28. Disciplinary Action Under Section 20 (2)**

The CIC recommended disciplinary action against an appellate authority. This appellate authority is not covered under the penal provisions of the Act. But in this case, he clearly failed to uphold the Act in the public interest. It was observed that this decision may be sent to the public authority to consider disciplinary action under their service rules.

CIC/EB/C/2006/00040 - 24 April 2006

### **29. Due Diligence Under Section 20 (1)**

It may have been lot better if the CPIO had kept the complainant periodically informed about the stages of the processing of his case and taken him into confidence about the possibility of some delay.

CIC/AT/A/2006/00066 - 4 July 2006

## **EXEMPTIONS FROM DISCLOSURE OF INFORMATION**

### **30. Commercial Secrets Protected by Law Under Section 8 (1) (d) and 11(1)**

A request was received by the Chief Commissioner of Customs for names of importers and exporters in the daily list of import and export which are being published from the customs houses. But a notification No.128/2004 - Cus (NT) dated 19 November 2004 forbids the disclosure of the names requested.

The CIC held that the notification containing rules are in the nature of subordinate legislation and have the legal force of Parliament.

Hence exemption from disclosure of information is appropriate under section 8(1) (d) of the RTIA.

CIC/MA/A/2006/00012 - 10 March 2006

### **31. Contract Under Section 8 (1) (d)**

Ramesh Chand applied to the National Institute of Science Communication and Information and sought information on terms of conditions and their implementation regarding a contract with another firm.

The CIC held that a contract with a public authority is not confidential. Offer, completion, quotations, bid, tender, prior to conclusion of a contract can be categorized as trade secret, but once concluded, the confidentiality of such transactions can not be claimed. Any public authority claims exemption must be put to strictest proof that exemption is justifiably claimed. Therefore, this public authority was directed to disclose the list of employees.

CIC/WB/C/2006/00176 - 18 April 2006

### **32. Agreement between the Public Authority and the Third Party**

Any commercial agreement between the public authority and the third party is a public document available for access to a citizen. No party could raise objections to an agreement with a public authority for supplying a copy of the agreement, except on the grounds of commercial confidentiality and the like which is specifically exempted in section 8(1)(d).

Appeal No.77/ICPB/2006 - August 21 2006

### **33. Answer Sheets and Fiduciary Relationship under Section 8(1)(e)**

In case of evaluated answer papers, the information available with the public authority is, in his fiduciary relationship, the disclosure of which is exempt under section 8(1)(e). In addition, when



a candidate seeks for a copy of the evaluated answer paper, either of her own or others, it is purely a personal information, the disclosure of which has no relation to any public interest or activity and this has been covered under section 8(1)(j) of the Act. The Commission, is not satisfied that the larger public interest justifies the disclosure of the information sought by the appellant. As a matter of fact the opinion is that furnishing copies of the evaluated answer papers would be against the public and supply of a copy of the evaluated answer paper would compromise the fairness and impartiality of the selection process.

ICPB/A-2/CIC/2006 - February 6, 2006

#### **34. Cut Off Marks**

The appellant desired to know the marks obtained by him in the written examination as well as interview in the Section Officer (Audit) Examination, 2005 conducted by the Staff Selection Commission. He also asked for the cut-off marks for OBC in the said examination. The CPIO declined to furnish the information sought without specifying the reasons for denial of information.

In a number of appeals and complaints received from the examinees against the CPIO of the SSC, the Commission has directed that the marks sheets should be furnished to the candidates along with cut off marks for various categories of candidates. In pursuance of those decisions, the SSC is expected to comply with the requests for mark sheets. In the instant case, the CPIO of SSC is directed to furnish the information.

180 /IC(A)/2006 - 17 August 2006

#### **35. Marks Secured by Candidates**

A Division Bench of this Commission has decided in Neeraj Kumar Singal case that conduct

of examinations are for identifying and short listing the candidates in terms of technical competence, the right attitude is highly confidential activity and therefore answer sheets should not be disclosed. But marks secured by candidates are not to be kept secret and should be furnished.

Appeal No.11/53/2006-CIC - 2 May 2006

#### **36. Process of Investigation Under Section 8 (1)(h)**

The fact that the appellant, a Member of Parliament in Rajya Sabha and a former Minister Shri Arun Jaitley, has sought access to the public records surely adds to the credence of the successful implementation of the RTI Act. In the instant case, information sought is huge and available in a large number of files, which are housed in two large rooms and kept in several cupboards under the custody of the CBI. Any attempt to compile voluminous information, so as to comply with the request of the appellant may disproportionately divert the public resources, which is not permissible under section 7(9) of the RTI Act. The CBI is conducting further investigations under section 173 (8) of the Criminal Procedure Code and therefore, the issue of freezing and de-freezing of the accounts of Shri Quattrocchi is not a closed matter, as contended by the appellant. In view of this, the exemptions claimed under section 8(1) (h) by the CBI is justified. 157/IC(A)/2006 - 1 August 2006

#### **37. Process of Investigation Under Section 8 (1) (h)**

Delhi Police received a request for results and status of a particular case. Date wise details of each and every investigational steps taken to solve this case were also sought. The CIC accepted the merit of the police authority's contention, that an open ended order by the CIC to disclose any information pertaining to details

of investigation into a crime will have serious implications for law enforcement and will have potentiality for misuse by criminal elements.

Each case will have to be examined independently on the basis of facts specific to that case. In the RTI, requests pertaining to the law enforcement authorities, it becomes necessary to strike a fine balance between the imperatives of the confidentiality of the sources of information, witness protection and so on, with the right of the citizen to get information.

CICAT/A/2006/00071 - 11 May 2006

### **38. Cabinet Papers Under Section 8 (1) (i)**

Section 8 (1)(i) of the RTI Act is under the heading 'exemptions' and makes interesting reading. This sub-section provides for exemption to cabinet papers 'including records of deliberations of the Council of Ministers, Secretaries and other officers'. Here the term 'including' may be construed to mean that the deliberations (a) of the Council of Ministers, (b) of the Secretaries and (c) of other officers are all exempted from disclosure-requirement, independent of each other, that is to say that not only the deliberations of the Secretaries and other officers pertaining to cabinet papers, but also their deliberations unconnected with the cabinet papers are exempted. Thus this exemption extends to (i) cabinet papers (ii) deliberations of (a) Council of Ministers (b) Secretaries and (c) other officers. This would effectively mean that all decisions of the Council of Ministers and the materials related thereto shall be disclosed after the decision under the first provision of this sub-section. But the wordings of the first provision makes no such disclosure stipulation for the deliberations of the Secretaries and other officers, whether connected or unconnected with the cabinet papers, or the decisions of the Council of Ministers.

A public authority shall be arguably within its right to take a view that all deliberations of

Secretaries and other officers shall be barred from disclosure under this sub-section. The materials connected with the Council of Ministers' decisions shall be disclosed, but the deliberations of the officers, Secretaries, etc. shall not be disclosed unless they answer affirmatively to the query. Are these materials connected with a cabinet decision ?

The other interpretation is that this sub-section and the provisos deal only with the decisions of the Council of Ministers, cabinet papers and all official deliberations connected with the decisions of the Council of Ministers. Therefore, this sub-section cannot be invoked for exemption of official deliberations unconnected with cabinet papers or the decisions of the Council of Ministers.

CIC/AT/A/2006/00145-13 July, 2006.

### **39. Cabinet Papers Under Section 8 (1) (i)**

On the question of disclosure of cabinet papers, particularly when the action has been taken and the matter is over, the contention of the CPIO and appellate authority that section 8(1)(i) of the Act is applicable as the matter is sub judice, is not tenable. The Act is clear on this issue, which states that:

The material on the basis of which the decision were taken shall be made public after the decision has been taken, and the matter is complete, or over.

In so far as action taken by the DOT, DoPT and ACC on the appointment of Shri Sinha, the matter is complete and over, the information sought may therefore be disclosed.

76/IC(A)/Z006 - 3 July 2006

### **40. Annual Confidential Report and Privacy Under Section 8 (1)(j)**

In regard to the annual confidential report of any officer, it is the view that what is contained

therein is undoubtedly personal information about that employee. The ACRs are protected from disclosure because arguably such disclosures seriously harm interpersonal relationships in a given organization. Further, the ACR notings represent an interaction based on trust and confidence between the officers involved in initiating, reviewing or accepting the ACRs. These officers could be seriously embarrassed and even compromised if their notings are made public. There are thus reasonable grounds to protect all such information through a proper classification under the Official Secrets Act.

No public purpose is going to be served by disclosing this information. On the contrary it may lead to harming the public interest in terms of compromising objectivity of assessment, which is the core and the substance of the ACR. This may even result from the uneasiness of the reporting, reviewing and the accepting officers from the knowledge that their comments were no longer confidential. These ACR are used by the public authorities for promotions, placement and grading, etc. of the officers, which are strictly house keeping and man management functions of any organization. A certain amount of confidentiality insulates these actions from competing pressures and thereby promotes objectivity.

The view therefore is that apart from being personal information, ACRs of officers and employees need not be disclosed because they do not contribute to any public interest. It is also possible that many officers may not like their assessment by their superiors to go into the hands of all and sundry. If the reports are good, these may attract envy and if these are bad, ridicule and derision. Either way it affects the employee as well as the organization one works for. On balance, therefore, confidentiality of this information serves a larger purpose, which far outstrips the argument for its disclosure.

CIC/AT/A/2006/00069- 13 July 2006

#### **41. Investigating Officer and Privacy**

A citizen requested from the RBI certain information relating to the findings of an inspection of the Memon Cooperative Bank Limited, Mumbai, which was conducted on the basis of a complaint filed by him and a copy of the inspection report along with the name (s) of investigating officers.

The CIC directed the RBI to furnish a copy of the inspection report after due application of section 10(1) of the Act. Alternatively, the appellant should be provided a substantive response, incorporating major findings of the inspection report and indicating the action taken on the findings of the report. However, the names of the investigating officers may not be revealed as it would not serve any public interest.

177/IC(A)/2006 -17 August 2006

#### **42. Bio Data and Medical Records Under Section 8 (1)(j)**

Bhagwan Chand Saxena asked for copies of the bio data submitted by four candidates at the time of their appointment as Assistant Directors and also copies of their medical reports submitted by the medical authorities declaring these candidates as fit or unfit.

The CIC held that when a candidate submits his application for appointment to a post in a public authority, the same becomes a public document and he can not object to the disclosure on the ground of invasion of privacy and directed the PIO to provide copies of the bio data.

As far as medical reports are concerned, they are purely personal to the individuals and furnishing of the copies of medical reports would amount to invasion of privacy of the individuals and need not be furnished. However, the PIO will disclose to the requester the information whether all the four candidates had been declared medically fit or not.

ICPB/A-9/CIC/2006 - 3 April 2006

**43. Travel Expenses**

Travel expenses were charged to the public account. Disclosure of information can not be denied on the ground of this being personal information and not a public activity and serves no public interest, etc. Travel has been performed as a part and in discharge of official duties and the records related the same are public records and therefore, a citizen has the right to seek disclosure of the same.

63/ICPB/2006 - 4 August 2006

**44. Income Tax Returns**

Income Tax Returns filed by an assessee are confidential information, which include details of commercial activities and that it relates to the third person. These are submitted in fiduciary capacities. There is no public action involved in the matter. Disclosure is exempted under section. 8(1) (j).

22/IC(A)/2006 - 30 March 2006

**45. Period prior to Twenty Years Under Section 8 (3)**

Section 8(3) is part of section 8, which deals with exemption from disclosure of information'. Section 8 (1) specifies classes of information which are exempt from disclosure. What section 8(3) stipulates is that the exemption under section 8 (1) can not be applied if the information sought related to a period prior to 20 years except those covered in section clauses (a), (c) and (i) of sub-section 8 (1). In other words, even if the information sought is exempt in terms of other sub-section (1) of Section 8, and if the same relates to a period 20 years prior to the date of application, then the same shall be provided.

37/ICPB/2006 - 26 June 2006

**46. The Third Party Information**

The RTI Act does not give a third party an automatic veto on disclosure of information. The PIO and AA are required to examine the third party's case in terms of provisions of section 8(1)(j) or section 11(1) as the case may be and arrive at a finding by properly assessing the facts and circumstances of the case. A speaking order should thereafter be passed.

CIC/AT/A/2006/00014-22 May 2006

**47. Public Interest and Environmental Protection**

Shri Piyush Mahapatra of Gene Campaign, Sainik Farms, New Delhi made two applications on 5 December 2005 at the reception of the Ministry of Environment and Forests seeking information relating to research and testing of a number of GM Crops and studies and allergy/toxicity tests conducted on some GM crops.

The CIC held that the CPIOs of Ministry of Environment and Forests and Department of Biotechnology, both public authorities being part of the regulatory regime are directed to cooperate to supply the information sought by the applicant. Both the Ministry of environment and Forests and Department of Biotechnology have an informative website. Information on research, testing and studies being of public interest may be placed on these as available in conformity with section 4(1) to ensure ease of access.

CIC/WB/C/2006/00063 and CIC/WB/C/2006/00064 - 30 May 2006

**48. Public Interest and Consumer Protection**

Appellant has made the case of public interest on the grounds of adulteration in distribution of diesel and petrol. He has however not substantiated his point as to how he would prove his allegations on the basis of disclosure of income tax returns filed by the third party.

Apparently there is no direct relationship between malpractices of petrol and diesel and income tax returns, which is mainly the basis for seeking information.

37/IC(A)/2006 - 12 May 2006

#### **49. Delhi High Court's stay on the CIC's Decision**

For the first time after the enactment of the RTI Act, Delhi High Court issued a stay on a decision taken by the CIC. Delhi High Court on 22 August 2006 stayed the CIC decision directing the government to make available to it copies of the late President K.R. Narayanan's letters written to the then Prime Minister Atal Bihari Vajpayee relating to 2002 communal violence in Gujarat. Justice Anil Kumar stayed the order of 8 August 2006 till 11 January 2007 on an application moved by the Union Government saying that the letters could not be made available to the CIC as it would impinge on the national security and integrity.

CIC/MA/A/2006/00121 - 8 August 2006

#### **SOME OTHER RELEVANT CASES**

##### **Law Enforcement Records**

Records compiled for law enforcement purposes do not lose their exempt status when they are incorporated into records compiled for purposes other than law enforcement as observed in the U.S. Supreme Court in *FBI versus Abrabson*, 456 U.S. 615 (1982).

##### **Terrorism and FOI**

Since the FOIA does not have a 'terrorism' exemption per se, the government has cobbled together several different exemptions, particularly Exemption 2, which can be used to withhold information where disclosure would allow for circumvention of a law or regulation, and several subsections of Exemption 7, particularly 7(E) protecting information pertaining to investigative methods and techniques, and 7(F), which allows

an agency to withhold records where disclosure could endanger the safety of an individual. The judge in Los Angeles accepted Customs speculation upholding its claims under both 7 (E) and Exemption 2.

Living Rivers involved a request by a local environmental group for flood inundation maps for Hoover and Glen Canyon Dams showing the potential consequences if either dam failed.

The Bureau of Land Reclamation provided an affidavit from its Director of Security, Safety and Law Enforcement (a position created after 11 September 2001), in which he referred to a dam failure as a weapon of mass destruction'. The judge was sympathetic to the government's concerns, she accepted Exemption 7 (F), noting that the agency's 'statements concerning risk assessment by terrorists demonstrate that release of the maps could increase the risk of an attack on the dams'.

Living Rivers versus United States Bureau of Reclamation, 272F. supp.2d1313 (D.utah 2003).

##### **The Public Interest**

The United Kingdom Information Commissioner in Boston Borough Council reference number FS 50064581 made the following comments on public interest :

The central tenet for the public interest in disclosing information, in this case, surrounds the creation of transparency and accountability of public bodies in their decisions and actions. This includes the spending of public money and the public interest in the disclosure of information which would highlight or inform issues of public debate.

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## OPPORTUNITY ORISSA

*Ashok Kumar Meena  
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The Government of Orissa holds out a plethora of possibilities adopting therewith a pragmatic approach to usher in balanced socio-economic growth in the State through industrialization, appropriate harnessing of natural resources and maximizing the employment potential of the local workforce. As part of this vision, in the year 2001, the Government announced the Industrial Policy Resolution (IPR) that marked a paradigm shift in the process of industrial growth, such as provision of enabling environment; private investment led growth and focus on sectors to benefit poor (examples - tourism, forestry, fisheries, horticulture, etc) and modern manufacturing and services sector. The State has a vision of creating a congenial business climate to attract investment in industry and infrastructure projects; raising income, employment and economic growth; and reducing regional disparities in economic development. The State initiated active investment promotion initiatives in reaching out to the private sector with concrete investment potential in sectors such as mineral value addition, power generation, cement, agro-processing, IT/ITES, etc.

"Team Orissa" constitutes the broad institutional framework of the Government that is engaged in industrial facilitation and investment promotion in all key areas of economic growth.

The Chief Minister is the captain of Team Orissa and the principal goal of the Team is to provide necessary synergies and convergence of all Government efforts to ensure Orissa's position at the vanguard of economic and social prosperity. The Orissa Industries (Facilitation) Act 2004 was enacted to provide single-window clearances and regulatory framework so as to reduce transaction costs and times for investors. The High Level Authority chaired by the Chief Minister and State Level Authority chaired by Chief Secretary have been constituted to evaluate investment proposals and accord clearances. Industrial Promotion and Investment Corporation of Orissa Limited (IPICOL) and Orissa Industrial Infrastructure Development Corporation (IDCO) have been entrusted with multi-faceted roles of investor support. At the District level, the General Managers of District Industries Centres (DIC) have similar roles. Since, the idea is to making "doing business" easy in Orissa, the Chief Secretary is leading the initiative of moving all Departments to simplify Acts, Rules, Policies or Procedures that may be a hindrance to business. The system of inspection is being rationalised to provide for common or joint inspections by all different Departments, Agencies or statutory Authorities. Grievance redressal for industries is being managed at the highest levels in the Government.

Today, Orissa is poised to add in excess of 50 million tones per annum (mtpa) capacity in steel making, 4 mtpa in alumina refining, 15 mtpa capacity in petrochemical refining and 5 mtpa in cement manufacture by the year 2010-11, with a direct employment forecast of 1,50,000 manpower and spawning the growth of indirect employment of multiple magnitudes. POSCO, Tata Steel, Jindal Stainless, Bhusan Steel, ESSAR, Indian Oil Corporation, Vedanta Industries, Hindalco, Grasim are among the blue-chip projects lined up for grounding.

The Morgan Stanley Global Economic Forum 2005 report forecasts that Orissa shall emerge as a centre for metals business in India and attract investments up to US\$ 30-40 billion over the next 5 years. Why so? The mere availability of mineral resources is not reason enough. The State offers immense prospects in terms of natural, institutional, developmental, economic and infrastructural advantages that give any investor a distinctive edge over other locations. Steel and aluminum makers located in Orissa shall be the lowest cost producers of primary metal. This shall enable them to survive and make normal profits, even during times of sectoral recession which ensures sustainability even for their vendors and customers. At other times, the cost economies shall enable these manufacturers to pass through the savings to their vendors, suppliers and business service providers.

The Government has clearly enunciated goals for the mining sector to propel economic growth by exploration, excavation & value addition of minerals; leverage mineral resources for all round development of the State and the people; and ensure significant job creation and increase in revenue for the Government. The strategy to realise the goals is multi-pronged and focuses on value addition; strong Government support for setting plants; monitoring of MoU milestones; captive mines for steel plants as against market price for ore; and stress on environment management and rehabilitation & resettlement. The steel sector has seen around 40 Memorandum of Understandings (MoUs) inked by the Government with involved investments exceeding US\$ 30 billion. The integrated steel project by POSCO India is the single-largest FDI in the entire country. The project includes establishment of mega infrastructures including a port, railway lines, roads, townships and is expected to give a major fillip to the capital buildup in the Paradeep region. It shall substantially contribute to the State and Nation's economic progress. It may not be wrong to view the POSCO project more as an infrastructure project rather than as a steel mill.

On these platforms, the State is in the process of building a strong base of ancillarisation and downstream industries that shall spread the economic fallouts of economic growth among a larger geographical and populace distribution. The ancillary, downstream and construction phase of steel, aluminum and petrochemical sectors are envisaged to be the largest contributors to employment generation and revenue resources in the State.

The spurt of growth in steel and aluminum sectors has necessitated the planning for quality manpower and human resources development.

The Government envisages a "model technical university" in the next 5 years for developing quality technical manpower to suit the needs of steel & alumina plants for which IIT Kharagpur and XLRI Jamshedpur have been roped in as partners to Biju Patnaik University of Technology (BPUT). The Vedanta Group has signed an MoU with for establishing a world-class technical university with 1,00,000 students' intake per annum in 95 disciplines for which the site selection has been finalised. The Directorate of Technical Education and Training (DTET) has also launched ambitious reform programmes for the ITIs, polytechnics and other centres of vocational education. The J.N. Tata Technical Education Centre at Gopalpur, being managed and operated by the Nettu Technical Training Foundation (NTTF) is evolving as one of the finest centres in India for providing practical & employment-related disciplines catering to the steel, mining and metal sectors. Many of the upcoming industrial projects are taking keen interest in supporting the local ITIs to improve their infrastructure, training facilities, laboratories, syllabi in order to build the capacities and skills of the local workforce making them highly employable.



As per the proposed policy of Government of India, Orissa is among the foremost States to ground a Petroleum, Chemicals and Petrochemicals Investment Region (PCPIR) at Paradeep. The proposed IR shall have Indian

Oil's 15 mtpa petrochemical refinery as the anchor tenant. A world-class developer shall be in place to provide for internal infrastructures and undertake marketing of the region to potential investors across the globe. Immense opportunities shall emerge for downstream chemical manufacturers and the converters & plastics industry.

Orissa was the first State to initiate reforms in the power sector. Today, the State is power surplus to the tune of 500 Megawatts (MWs) and offers the most competitive tariff amongst the mainland States. However, with the increased industrial demand, Orissa needs additional generating capacity of 9,000 MWs by 2010-11. The State offers coal deposits of 45 billion tonnes to sustain generation of 2,25,000 MWs for 30 years and a hydro potential of 2,850 MWs. With 100 per cent FDI allowed, opportunities exist across the entire value chain of the power sector and there is an increased thrust on mega projects and modernisation of existing units. Looking at the demand position, the Government has entered into 13 MoUs with independent power producers (IPPs) for combined capacity in excess of 13,000 MWs. What will be important is to find adequate use for the flyash generated by various independent power producers (IPPs) and captive power plants (CPPs). With these developments, technical studies have been commenced to determine infrastructure requirements for evacuation of power by proposed IPPs. The studies include examination of existing networks and proposed expanded networks to integrate new IPPs. The IPPs are being encouraged to promote industrial parks in adjacent 200-250 acres for developing power-intensive & value-adding industries to ensure maximum economic growth of the region. The cement projects encouraged are precisely for this purpose, i.e. to ensure utilization of flyash and blast furnace slag.



Another development which shall completely change the energy availability scenario and propel the State into the forefront of country's economic progress is the discovery of natural gas off the coast of Orissa. Leading gas and energy majors like Gas Authority of India Limited (GAIL) and Reliance Industries have proposed to establish statewide gas grids and networks, including piped gas supply to cities and towns. This shall support an energy sector growth plan that is leveraged upon energy availability, energy efficiency, energy conservation and green technologies.

A cluster approach to development of micro, medium and small enterprises is gradually being adopted in sectors like handloom & textiles, handicrafts & cottage industries, ancillary and downstream / upstream industries. With the inherent skills in handloom and handicrafts available in the State, at this juncture, the sectors need further development and augmentation in the links of the overall value-chain. Better market linkages, access to finance, new designs incorporation and patenting of product lines are the critical challenges. Establishment of a branch of National Institute of Design, Ahmedabad in Orissa will boost the sectoral initiatives. The textiles and crafts are huge employment sectors in the State and are on top of the Government's growth planning agenda. To this end, an integrated textiles park is being set up at Choudwar by Welspun Group, the leading sectoral player in the country.

Keeping Information Technology (IT) / IT Enabled Services (ITES) as a priority sector, the State has endeavored to triple engineering / MCA technical education capacity since 2001. Today, Orissa is home to the big 4 Indian IT majors - Satyam, Infosys, TCS & WIPRO and also is a primary recruitment center for IT personnel. Other leading Indian IT players like Hexaware, Mindtree, Ramitech are part of

Bhubaneswar's IT horizon. A mega InfoPark is under development for which the reputed DLF has been finalized as the concessionaire. This shall pave the way for availability of ready-to-occupy office space for the IT sector SMEs which are showing keen interest of operating from Bhubaneswar. The city shall be home to more than 20,000 software professionals by the year 2008 and 100,000 by 2015. The Department of IT has an ongoing partnership with leading training service providers to build the capacity of the educated youth for the BPO sector, which will be further boosted by the advent of Genpact (the largest BPO corporate in India). Now, it is imperative for the State to do a masterplan and implement the same towards making Bhubaneswar the new knowledge and IT hub. A big stride has been taken with the forging of partnership with IIIT, Bangalore to set up an IIIT at Bhubaneswar. All stakeholders are working on creation of IT-specific SEZs in the State.

In the last two years, an increasing realization among policy framers and programme managers in Orissa has been the growing importance of infrastructure to sustain and power this emergent trend of growth. After all, it is infrastructure which shall provide the base to industrial development. Moreover, it is infrastructure that shall ensure that the State's different industrial regions / clusters emerge as vibrant & throbbing centres of economic growth, rather than as industrial slums. At this stage, it is on the Government's topmost agenda to add to the social overhead capital buildup in the State that shall create inter-sectoral linkages and provide outstanding technical and economic features to the industries located in our State. It is infrastructure development that shall ensure that the current crop of industrial projects are not isolated entities, but built into the socio-economic framework of the State by ensuring spillover from users to non-users and increasing returns to scale.

In this context, the role of the private sector in infrastructure development and management assumes great significance. With limited public resources available for the purpose, the State now wishes to leverage upon private capital to develop world-class infrastructure in areas like road corridors, ports, power transmission, rail linkages, industrial water supply, industrial clusters, etc. The successful conclusion of the shareholders' agreement for developing an 82 kilometer rail link between Paradeep and Haridaspur, connecting the iron ore hinterland with the port is considered as a major landmark because 9 parties including steel projects, mining companies, port trust and Government agencies have joined hands for the US\$ 133 million infrastructure creation. Similarly, the 98 kilometre Angul - Duburi - Sukinda rail link project between the coal bearing areas and the iron ore belt, with an estimated cost of US\$ 117 million is in the stage of finalization involving participation of 9 private steel companies.

The Government has taken many initiatives in recent times. These include turnkey port development in Gopalpur and Dhamra, augmentation and strengthening of the road network, power sector improvement, industrial water supply schemes, etc. But, there is still scope in improving the quality of infrastructure provision. And, that is precisely the reason why the Government seeks and welcomes the role of quality private sector service providers. It will be critical in the times ahead to be able to configure infrastructure projects through the MoU route, rather than through circuitous and long-winded bidding process. This shall increase developers' confidence and also accelerate the pace of project development in the infrastructure sector, which can otherwise have long gestation periods. The Infrastructure Policy that is on the anvil, provides for a transparent, fair and commercially sound framework for the private sector's participation. The Policy also purports for independent

regulatory mechanisms as well as an institutional mechanism to configure and accelerate the pace of projects through Public - Private Participation (PPP).

Due priority is being accorded to social infrastructure such as health service, education service, housing, etc besides the typical industrial infrastructure. Many private education service providers have established centres in Orissa. Modern health service providers like L.V.Prasad EyeCare Institute and Apollo Group, have started making proposals to the Government and some of them have already been allotted land in Bhubaneswar. But, there is a need to increase efforts to get more numbers of such service providers and not just restricted to Bhubaneswar. It shall be the Government's responsibility to create an enabling environment for private sector investment in these social infrastructures. While trying to address the issues faced by such investors through adequate policy and institutional backup, a level playing field must be provided to them which shall ensure their commercial viability. A mechanism for accessing land for such service provision on a large scale basis, will need to be evolved.

Agriculture growth leveraged upon greater private investment in the entire value chain of agro and food processing has been initiated through Amendment of the Orissa Agricultural Produce Markets Act, 1956. The State is embarking on contract farming for crucial crops like cotton and oilseeds from 2006-07 rabi season with the objective of increasing crop area and productivity and a MoU is proposed with NAFED to start contract farming of groundnut and til. The Centre and State have come together to promote Koraput ginger and Phulbani turmeric and two distinct agro-processing zones are being established to fill sectoral infrastructure gaps. Similarly, in the case of fisheries and aquaculture, a vision and action plan has been drawn up for boosting

exports from the State. The ambitious action plan envisages a three-fold increase of exports within the next 5 years. The Centre would provide finance for the establishment of two cold chains, one at Paradeep port and the other at Bhubaneswar airport for the export of marine and agro-products from the State. This shall also actualize the true employment potential exceeding 2,00,000 workforce. While these developments provide the initial fillip, the Government will however need to take urgent and strong steps to develop the various facets of agro and food processing sectors. Further legal and regulatory barriers may need to be removed to enable the



growth of private sector and indigenous enterprise / entrepreneurship in these sectors, in line with best global practices and modern paradigms.

The Action Agenda today for all stakeholders includes realisation and grounding of investment proposals; addressing investors' concerns; providing special thrust on small & medium scale industries; cluster development; leveraging natural resource endowments of mineral, forest and coastline resources for greater value addition and employment generation; developing agriculture & agro-processing; and strengthening infrastructure. The next 5 years are very critical for Orissa when most of the planning for industrial growth shall fructify and Orissa shall

make the transition to a vibrant and industrially developed State.

Team Orissa invites all Entrepreneurs & Promoters to make the most of the emerging opportunities in Orissa and partner in:

- \* Ancillary, downstream and construction phase projects of mining, steel, aluminium and petrochemicals sectors
- \* Equipment and technology suppliers & vendors
- \* Applications of blast furnace slag and flyash
- \* Engineering and fabrication
- \* Power projects - fuel options like coal washing and hydropower
- \* Tourism
- \* Information Technology
- \* Agro and marine products processing

Team Orissa welcomes private investments in infrastructure buildup :

- \* Operations, maintenance and development of ports
- \* Development of industrial parks, IT parks and SEZs
- \* Power evacuation infrastructure
- \* Critical economic & social infrastructures in industrial and mining corridors - roads, water supply, housing, hospitals, etc
- \* Technical / vocational education and healthcare service providers to forge linkages / partnerships for establishing centres in Orissa

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# BIJU KBK PLAN : MODALITIES AND GUIDELINES

With a view to continuing their increasing efforts as well as for maintaining the momentum gathered under the Revised Long Term Action Plan (RLTAP) and upscaling the public investment in the Koraput-Bolangir-Kalahandi (KBK) region, the State Government have launched a new initiative, called "the Biju KBK Plan" under State Plan as a tribute to late Biju Patnaik. Former Chief Minister of Orissa who was the first to articulate the need for long-term measures for development of the KBK region. The rationale, modalities and guidelines for the Biju KBK Plan are as follows:

## **2. The KBK Region: Most Backward Region of the Country**

**2.1** The KBK region, comprising undivided Koraput (i.e., Koraput, Nawarangpur, Malkanagiri & Rayagada), undivided Bolangir (i.e. Subarnapur and Bolangir) and undivided Kalahandi (i.e., Kalahandi & Nuapada) districts, is the poorest and most backward region of the country. As per estimates of the 55th round of NSS Survey conducted in 1999-2000, the incidence of rural poverty was as high as 87.14%. The region also suffers from acute economic, social and gender disparities, and very adverse socio-economic and human development indicators. The multifaceted deprivation and backwardness of this region are the result of deep rooted factors or processes that have emanated from a complex mix of geographical, economic and social factors. This region is general, and undivided Koraput and Kalahandi districts in particular are almost at the bottom of the list of 250 Backward Districts

identified under Backward Regions Grant Fund (BRGF). Therefore, long-term and holistic development strategies are needed to bring this region closer to the other regions of the State, as well as that of the Country.

## **3. The Biju KBK Plan: Rationale**

**3.1** Because of its very adverse socio-economic and human development indicators, the KBK region has for some time past been attracting the attention of Government of India, National Human Rights Commission (NHRC) and the State Government. The need for longterm measures for speedy development of this region with special attention to removal of poverty and livelihood support was first articulated in early 1990s by late Biju Patnaik, then Chief Minister of Orissa and a Long-Term Action Plan (LTAP) for a period of seven years was submitted by the State Government to Government of India in 1993-94 for their approval. LTAP was approved and launched in August 1995. However, the programme did not take off due to inadequate fund flow and major initiatives could not be undertaken. LTAP was, therefore, modified as Revised Long-Term Action Plan (RLTAP) that was conceived as a comprehensive and long-Term special area development plan for a period of nine years from 1998-99 to 2006-07. The region has been receiving Special Central Assistance (SCA) of Rs.250 crore per year under RLTAP effective from the year 2003-04. With active support from Government of India and pooling of resources the State Government has been making concerted

efforts during the last five years to improve the implementation of RLTA schemes and accelerate the development process in the KBK districts.

**3.2** The Government of India have also included the KBK districts under National Food for Work Programme / National Rural Employment Guarantee Act (NREGA), and propose to include these eight districts under BRGF retaining the special funding for the region at Rs.250 crore per year. Though these initiatives are expected to improve conditions in the region to some extent and are, therefore, a step in right direction, however the quantum of funding may not be adequate to take care of special problems and needs of the region. The major gaps in rural infrastructure like road connectivity, drought proofing, health and education infrastructure, social safety nets etc, act as a drag on the speedy growth and reduction of poverty rates in this region.

**3.3** The poverty in this ST & SC dominated region is not only widespread, but is also very severe and of a long duration. More than 50% of the rural poor in the area are at least 20% or more below the poverty line. Moreover, tribals of this region are greatly handicapped because of their physical isolation, low human capital development, poor communication and markets. In his report dated 13th March 2006 to NHRC, the Special Rapporteur, NHRC has observed, among other things, that "... poverty in the KBK region has to be considered in its specific context by recognizing not only the incidence of poverty as per national norm but also the depth and severity of poverty which distinguishes it from poverty in other parts of the country and calls for special strategies and concerted action like RLTA. Considering the importance of the programme and projects taken up under RLTA and the results of implementation which can be improved further by following the Commission's recommendation regarding monitoring, I request the Commission to

recommend to the Government of India a further extension of RLTA for a period of ten years".

**3.4** There is, therefore, a growing realization within the State Government and in Civil Society that the KBK region requires a holistic and long-term development strategy, needing continued, focused attention and greater fund flow over and above normal development inputs coming from the State and the Central Plans so that special problems and needs of this region and those of the people are effectively addressed and a serious dent into poverty can be made.

**3.5** Therefore, with a view to maintaining and strengthening the momentum gathered by RLTA and upscaling the public investment in the KBK region, the State Government launched a new initiative, called "the Biju KBK Plan" under State Plan as a tribute to late Biju Patnaik who was the first to conceive a Long-Term Action Plan for the KBK region. The Biju KBK Plan is to be implemented over a period of 5-Years effective from the year 2007-08 to 2011-2012 and envisages an annual outlay of Rs120 crore over and above normal plan allocations, and the Special Central Assistance that may be available to the region under the Backward Regions Grant Fund (BRGF). The Biju KBK Plan shall form the part of the Special Area Development Project that has been constituted vide Planning & Coordination Department Resolution No. 4148/LTAP-86/99/P, dated 14.03.2000.

#### **4. Objectives of Development Strategies for the Plan**

**4.1** The objectives of the Biju KBK Plan are as follows:

- (i) Creating opportunities for economic, social and human development for the people in the region, especially the disadvantaged,
- (ii) Accelerating poverty reduction and achieving millennium developmental goals, and

(iii) Improving the quality of life of the local people and bringing the region at par with other developed regions.

**4.2** In order to achieve the aforesaid objectives, the following strategies would guide the Plan:

(i) Building rural infrastructure (e.g., critical roads and bridges, minor irrigation projects, tanks, watershed development, markets and afforestation),

(ii) Developing district-specific and sub-district-specific livelihood support programmes (e.g., agriculture / horticulture development, animal resources, fisheries, afforestation and forest-based enterprises, micro credit support, agro-processing enterprises and other value addition initiatives),

(iii) Mobilising and empowering the rural poor through SHG, Vana Samrakhan Samities, Pani Panchayats and participatory planning,

(iv) Promoting quality education, employable skills and health programmes taken to the specially distant habitations,

(v) Strengthening social security systems (e.g., food security, old age pensions, special nutrition programmes, houses for the rural poor, and other initiatives),

(vi) Enhancing development effectiveness through convergence of resources and programmes, efficiency in resource use and improved governance and service delivery, and

(vii) Synthesizing the traditional knowledge available with the communities in all developmental activities and preserve the traditions and culture of the region and make the development process inclusive and pro-poor.

## **5. Increased Fund Flow to the KBK region**

**5.1** Each Development Department is mandated to allocate atleast 30% of their plan

funds including funds received by them under Central flagship programmes such as Bharat Nirman, NREGP, and other programmes to the KBK region.

**5.2** Government of India shall also be requested to direct Central Ministries to ensure that atleast 30% funds available to the concerned line departments under Central Plan and Centrally Sponsored Plan Schemes are allocated to the KBK region.

**5.3** With a view to ensuring convergence of resources and programmes, development funds available from all sources including Central Plan, Centrally Sponsored Plan, State Plan and other flagship programmes such as Bharat Nirman and BRGF shall be taken into account while preparing Annual Action Plans for the KBK region.

**5.4** The funds available under the Biju KBK plan shall be used as an additionality to fill critical gaps for which funds are either not available or are inadequate. The Plan funds may also be used for innovative schemes.

**5.5** Specified amount out of available funds shall also be utilized for strengthening District Planning Committees and grass root level planning, and improving the local self governance.

## **6. Mechanisms for Implementation of the Plan**

**6.1** Planning & Coordination Department shall be the Nodal Department for the purpose of Administration of the Biju KBK Plan.

**6.2** The Plan shall be executed in all 8 (eight) KBK districts and shall have two windows : (i) State Window, and (ii) District Window. The State Window component of the Plan shall be implemented through different line Departments, which will take appropriate budget provisions for this purpose under appropriate heads of account each year. The District Window component of the Plan shall be implemented under the umbrella

of the District Plans and appropriate budget provisions for this purpose shall be taken by P & C. Department. Each District Collector shall ensure preparation of a District Plan in a specified manner, which shall be examined and consolidated by the District Planning Committee. Grassroots level consultation should be part and parcel of the Plan formulation.

**6.3** The Biju KBK Plan shall also fill up critical gaps left uncovered under Backward Regions Grant Fund (BRGF). It shall specifically take up construction of 10,000 Buildings for Women Self Help Groups (WSHG) at a cost of Rs.3 lakh per building within the 11th Five Year Plan. Priority shall also be accorded to hostel buildings for girl children, critical gaps in connectivity such as cross drainage works including culverts and bridges, buildings for Anganwadi centres etc.

**6.4** With a view to maintaining a long term perspective and providing a definite direction to the Plan, each district shall prepare a 5 year perspective plan. The funds available under the District Window should be treated as additionality for the district Plan. Each District shall prepare Annual Action Plan which will form the part of the State Annual Plans. The approval of the State Annual Plan by the State Government as well as the Planning Commission shall be deemed to be the approval of the special plan for the KBK districts.

**6.5** The proposals received under the State Window shall be examined and approved by the Government in P & C. Department. The approved State Window component shall be implemented by concerned line Departments in the same manner as RLTA has been implemented. Funds shall be released under the Biju KBK Plan in not more than two installments by the P & C. Department direct to the concerned Collectors who shall maintain a separate head of account for the Plan with the District Rural Development Agency (DRDA). The concerned Project

Director, DRDA shall function as Drawing & Disbursing Officer for the District Window of the Plan.

**6.6** The line Departments and District Collectors shall release the received funds to the concerned implementing agencies within 15 days of the receipt of funds from the P & C. Department. The concerned line Departments, District Collectors and Project Directors, DRDA shall be directly responsible for effective and timely implementation of the Plan and shall furnish Monthly Progress Report (MPR) on financial and physical achievements of the Plan to P & C. Department by of the following months.

**6.7** The implementation of the Plan shall be periodically monitored and evaluated by District Planning Committees, Planning & Coordination Department and the State Level Committee, constituted for RLTA.

## **7. Preparation of District Plan**

**7.1** For availing the additional developmental assistance under the Plan, preparation and consolidation of the District Plan by, and strengthening the capacity of, DPC shall be mandatory. District Plan shall be prepared as per the Guidelines for the District Plan in the 11th 5-year plan as contained in Planning Commission Letter No. 13011/1/2006/SP-Co. dated 25.8.06 which has been already circulated to all Collectors vide P & C. Department letter No.12189(30)/P, dated 04.09.2006 and in such a manner as may be specified by P & C. Department from time to time.

**7.2** The needs and aspirations of Gram Panchayats, Panchayat Samities and Zilla Parishads shall be fully reflected in the District Plan. DPC shall prioritize the schemes received from different Gram Panchayats, Panchayat Samities and Zilla Parishads and incorporate them in the District Plans in a phased manner.

**7.3** The DPC shall also prepare a benchmark survey of key monitoring indicators before the first District Plan is implemented. The benchmark indicators shall be used for effective monitoring and evaluation of the plan.

**7.4.** The main principles which may be taken into consideration for preparation of the District Plan are summarized as follows:

(i) The flow of funds from all sources namely State Plan, Centrally Sponsored Schemes, Central Schemes, externally aided projects and funds received from any other source for development purpose are to be aggregated in arriving at the resource availability for District Plan.

(ii) Funds under the Biju KBK Plan are to be used as additionality for those schemes for which funding from other sources including State Plans, Centrally Sponsored Schemes, Central Schemes and funds received from any other source for development purpose is either not available or is found to be inadequate.

(iii) The cost effectiveness of all Schemes shall be carefully evaluated so that returns from the funds invested under the scheme are maximized.

(iv) People's participation and involvement of PRIs, NGOs, VECs, Pani Panchayats, Self Help Groups and other community based organizations should be ensured at every stage including plan formulation, implementation and monitoring.

(v) There shall be complete transparency in the choice of schemes and projects and their locations. The prioritized list of schemes and projects and the reasons for taking up the schemes and the criteria for choice of locations must be reflected in the District Plan and be made available on the web-site. The involvement of Palli Sabha and Gram Panchayats in selection of investment projects is critical.

(vi) It shall be ensured that the schemes are sustainable and durable assets are created. Special attention is to be given to sustainability of each

project. In the case of community assets, wherever possible future maintenance should be built into the programme, e.g., if a community hall is constructed, individuals who use the hall should be encouraged to pay user fees so that a corpus fund for maintenance can be created.

(vii) Efforts should be made to concentrate the development activities in poorer pockets and for disadvantaged communities within the district. It will be mandatory that the District Plan allocates funds for SC communities under the Scheduled Castes Sub-Plan (SCSP) and ST communities under Tribal Sub-Plan (TSP) modes in proportion to their populations in the district.

(viii) The District Plan shall be on the basis for Development Vision for the district and not be a mere collection of schemes and projects for which funding from existing sources is insufficient.

## **8. Social Audit**

**8.1** Social Audit and vigilance shall be encouraged at grass-roots level. The District Collector shall also prepare schedules of inspection which prescribe the minimum number of field visits for each supervisory level functionary and ensure that the inspection schedules are faithfully followed by supervisory level functionaries. The Government in Planning & Coordination Department may also prescribe additional monitoring and evaluation mechanisms, reports and returns with a view to assessing the effectiveness of the implementation of the Plan from time to time.

## **9. Other Matters**

**9.1** Planning and Coordination Department shall be responsible for clarifying doubts, if any, and ensure that bottlenecks in the implementation of the Plan are removed as expeditiously as possible and communicated to all concerned.

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*Source* : Planning & Co-ordination Department, Government of Orissa.



# GOPABANDHU GRAMIN YOJANA

*Hemanta Kumar Nayak*

The Government of Orissa under the dynamic leadership of Chief Minister Shri Naveen Patnaik has launched a new initiative called "The Gopabandhu Gramin Yojana (GGY)" on October 9, 2006 with a view to providing additional developmental assistance to the targeted 11 (Eleven) districts which are not covered under the Backward Regions Grant Fund (BRGF). The scheme has been implemented from the year 2006-07 and will continue to be implemented during the 11th Plan period from 2007-08 to 2011-12.

## **2. Coverage of Districts :**

The GGY has been implemented in the following 11 districts ; (i) Angul (ii) Balasore, (iii) Bargarh, (iv) Bhadrak, (v) Cuttack, (vi) Jajpur, (vii) Jagatsinghpur, (viii) Kendrapara, (ix) Khurda, (x) Nayagarh and (xi) Puri.

## **3. Objectives of GGY :**

The principal objective of the scheme is to provide additional development funds to the targeted districts to provide infrastructure consisting primarily of *Bijli*, *Sadak* and *Pani* (i.e., electrification, roads and water supply) to every revenue village in the identified 11 districts. Some of the specific projects which could be taken under the Yojana would be in the nature of construction of concrete roads within the village,

construction of black top/concrete roads to connect a village with a nearest PMGSY or ODR road, installation of street lights within the village, for which the maintenance is to be borne by the concerned Gram Panchayat (GP), provision of drinking water supply and creation of irrigation sources.

The additional development funds provided in this Yojana would be of un-tied nature and supplement the programmes which are already available in the aforesaid sectors and provide synergy and convergence to the different development programmes.

## **4. Fund Allocation :**

Each targeted district will provided an additional development assistance to the extent of Rs. 10 crore (Rupees Ten Crore) per annum for a period of 6 years from 2006-07 to 2011-12.

## **5. Mechanisms for implementation of the GGY**

Panchayati Raj Department is the Nodal Department for the purpose of administration of the GGY and take appropriate budget provisions for this purpose under separate head of account each year beginning from the year 2006-07 onwards until the expiry of the Eleventh Five Year Plan.

The GGY aims at providing infrastructure consisting primarily of *Bijli, Sadak* and *Pani* to every revenue village in the identified eleven districts. For this purpose, each village may be allotted funds in the following manner (i) the villages having a population below 500 persons may be given funds to the extent of Rs. 2 Lakh each, (ii) the villages having population above 500 but less than or up to 1000 persons may be given Rs. 3.00 lakh each, and (iii) the villages having population more than 1000 persons may be given Rs. 5 lakh each. The census figure of 1991 shall be adopted for determining the population of village for the purpose of implementation of this Yojana. The objective is to cover all revenue villages in a phased manner by the end of the 11th Five Year Plan.

The Gram Sabha of the identified village shall select the projects to be undertaken within the village to the ceiling prescribed above funds received from other sources such as SGRY, Finance Commission Award etc. may be dovetailed for the purpose. Contributions from villages may also be encouraged.

The proposals approved by the Gram Sabha shall be compiled by the Block and put up to the District Level Committee for approval of the project lists. There will be a District Level Committee headed by the Collector and will consist of all the M.P., MLAs and Chairperson, Zilla Parishad of the district. While selecting the villages and the schemes, the District Level Committee shall ensure that the resources are not spread too thin and that durable assets are created.

After the projects are sanctioned, estimates will be prepared by the BDO for those projects which can be accommodated within the financial allocations for the particular year. The process may be repeated every year. While

preparing the estimates, the BDO may take assistance of Assistant Engineer of the Block/Engineers of the Electricity Utility/Water Resources Department etc. as the case may be. The limit of administrative and technical sanctions for this projects will be the same as available for similar ongoing schemes. The provisions of OGFR and OPWD code would apply to the projects to be taken up under the GGY.

The Yojana will be executed in the eleven targeted districts under the umbrella of the district plans. The projects under the GGY shall be integrated with the district plan to bring about necessary convergence with other schemes of the Government such as the Swajaladhara, the Biju Krushak Vikash Yojana, the Rajiv Gandhi Gramin Vidyutkaran Yojana and PMGSY etc.

While doing so, the following points may be kept in mind;

- (a) Villages having a population of more than 1000 persons may be provided with a multipurpose hall of around Rs. 5 lakh to be taken up within the premises of the school with funds from Sarba Sikshya Abhiyan (SSA). The hall may have a raised platform at one end to be used as dais. Such a hall may also be available to the village during off hours or during school holidays for community use. The school committee may charge a suitable fee for the use of the hall which should be retained in the school for maintenance and other developmental activities of the school.
- (b) In blocks having less than 35% of irrigation, a special drive may be conducted to take up irrigation projects under the Biju Krushak Vikash Yojana. Such projects may include lift irrigation points, community bore-well projects, etc. depending upon the feasibility of the project. Villages having population more than 1000 persons may be given priority over those having

less than 1000 population. Over-riding priority should be accorded to Scheduled Castes and Scheduled Tribes habitations irrespective of their population status, for which funds should be accessed inter-alia from MADA, ST & SC Development Corporation, ITDA etc. wherever applicable.

Funds will be released in not more than two installments by the Panchayati Raj Department directly to the concerned Collectors who will maintain a separate head of account for the Yojana with the District Rural Development Authority (DRDA). The concerned Project Director, DRDA will function as Drawing & Disbursing Officer for this Yojana.

The District Collector will release the funds to the concerned implementing agencies within 15 days of the receipt of the funds from the Government in Panchayati Raj Department. The District Collector and Project Director, DRDA will be directly responsible for effective and timely implementation of the Yojana. The Collector will furnish Monthly Progress Report (MPR) on financial and physical achievements of the Yojana to the Panchayati Raj Department.

#### 6. The State Level Steering Committee

There will be a State Level Steering Committee (SLSC) under the Chairmanship of Chief Secretary that will have the overall responsibility for effective implementation, monitoring and evaluation of the impact of the Yojana. The SLSC will have the following the composition.

- |  |   |             |
|--|---|-------------|
| (i) Chief Secretary  | - | Chairperson |
| (ii) Development Commissioner<br>- Cum - Additional Chief<br>Secretary             | - | Member      |
| (iii) Agriculture Production<br>Commissioner - Cum -<br>Additional Chief Secretary | - | Member      |

- |   |   |                     |
|---|---|---------------------|
| (iv) Principal Secretary, Finance                               | - | Member              |
| (v) Special Secretary (Plan)<br>Planning & Co-ordination (Plan) | - | Member              |
| (vi) One nominated NGO/CSO                                      | - | Member              |
| (vii) Secretary, Panchayati Raj<br>Department                   | - | Member<br>Secretary |

The Chairperson of the State Level Steering Committee will have the powers to invite any other officer, authority or civil society organization to a meeting of the committee. The Committee will decide its own rules of business.

#### 7. Preparation of District Plan

District Plan will be prepared as the Guidelines for the District Plan in the 11th Five Year Plan as contained in Planning Commission Letter No. 13011/1/2006/SP-Co. dated. 25.08.06 which has been already circulated to all Collectors vide P & C. Department letter No. 12189(30)/P dated 04.09.2006 and in such a manner as may be specified by P & C Department from time to time.

The main principles which have to be taken into consideration for implementation of the GGY and the preparation of the District Plan are summarized as follows :

- (i) The flow of funds from all sources namely State Plan, Centrally Sponsored Schemes, Central Schemes, externally aided projects and funds received from any other source for development purpose are to be aggregated in arriving at the resource availability for District Plan.
- (ii) Funds under the Yojana are to be used as additionality for those schemes that are selected, developed and approved in the manner as elaborated in section 5 above.
- (iii) The cost effectiveness of all schemes should be carefully considered so that returns from

the funds invested under the scheme are maximized.

(iv) There should be complete transparency in the choice of schemes and their locations. The prioritized list of schemes and the reasons for taking up the schemes and the criteria for choice of locations must be reflected in the District Plan and be made available on the web-site.

(v) It should be ensured that the schemes are sustainable and assets should be planned with care so that they are useful and maintained even after the scheme is over. Special attention is to be given to sustainability of each project. In the case of community assets, wherever possible future maintenance should be built into the programme, e.g. if a community hall is constructed, individuals who use the hall should be charged user fees so that corpus fund for maintenance can be set up.

(vi) It will be mandatory that funds are allocated for SC communities under the Scheduled Castes Sub-Plan (SCSP) and ST communities under Tribal Sub-Plan (TSP) modes in proportion to their populations in a village.

## 8. Social Audit :

Social Audit and vigilance shall be encouraged at grass-roots level. The District Collector shall also prepare schedules of inspection which prescribe the minimum number of field visits for each supervisory level functionary and shall ensure that the inspection schedules are faithfully followed by supervisory level functionaries. The Government in Panchayati Raj Department may also prescribed additional monitoring and evaluation mechanisms, reports and returns with a view to assessing the effectiveness of the implementation of the Yojana from time to time.

## 9. Other Matters

Panchayati Raj Department shall be responsible for clarifying doubts, if any, and ensure that bottlenecks in the implementation of the Yojana are removed as expeditiously as possible and communicated to all concerned.

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Hemanta Kumar Nayak is an Asst. Information Officer in the Information & Public Relations Department, Bhubaneswar

### NEW GENERATION BICYCLE PLANT TO BE SET UP IN ORISSA

The State Government has signed a memorandum of understanding with Uttam Galva Steel Limited (UGSL) for establishment of a three million tonne steel plant and 210 MW power plant with an investment of Rs.8,987 crore, and a new generation bicycle plant at Gopalpur. On the occasion, Chief Minister Shri Naveen Patnaik said the establishment of the new generation bicycle plant will usher in a revolution in the sector. UGSL is a secondary steel producer, which converts hot-rolled coils into cold-rolled ones and sheets for different end-rolled ones and sheets for different end-users like automobile, white goods, general engineering, drum and barrels sectors. The MOU was signed by Secretary in the Steel and Mines Department Shri L .N.Gupta and UGSL Chairman Shri R.K. Miglani. Industries Minister Shri Biswabhusan Harichandan, Minister for Steel and Mines Shri Padmanabha Behera, Chief Secretary Dr. Subas Pani and senior officials were present.

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# PRELUDE

The introduction of Right to Information Act in the middle part of the year 2005 necessitated many changes in the system of governance. The rights of the citizens to get the information under the control of public authorities were ensured with the emergence of this path-breaking legislation. The Right to Information Act, 2005 essentially targeted transparency and accountability in the functioning of the government inducing thereby a paradigm shift in administration. The transition experienced was quite interesting in many ways. It was not so easy for backward states of the country to implement this Act in true letter and spirit as many inherent angularities were stumbling blocks. The process of implementation of the Right to Information Act, 2005 in Orissa was initiated in a planned manner. The Government of Orissa assigned the responsibility of implementation of this Act to the State Information & Public Relations as the nodal department. A multi-pronged strategy was drawn up to implement this Act within a specific time frame. Keeping 12th October, 2005 in view, the State Information & Public Relations Department evolved a pragmatic plan for execution of many programmes targeting the smooth implementation. In identifying Public Authorities, designating Public Information Officers and First Appellate Authorities, organizing training programmes for master trainers and resource persons, arranging orientation programmes for Hon'ble Members of Orissa Legislative Assembly, formulating Orissa Right to Information Rules, 2005 and consequent amendment in 2006, accelerating the process of proactive disclosure, putting in place Orissa Information Commission, defining appeal procedure for the State Information Commission, issuing operational guidelines, applying print media for awareness generation and above all devising appropriate formats for monitoring and report as required under the Act, the State Information & Public Relations Department has made sincere efforts for effective implementation of the Right to Information Act in Orissa. To add speed and accuracy into the whole process of implementation, the information technology has been applied as a useful tool.

While focusing this Act in this November issue of Orissa Review, we have tried our utmost to present independent, unbiased and frank views of many experienced authorities though necessarily these are not views of the government. We hope, our esteemed readers will possibly understand these dynamics as the precursor to an informative piece of publication.



**Digambar Mohanty**  
Commissioner-cum-Secretary & Nodal Officer,  
Right to Information

VIEWS EXPRESSED AND SUGGESTIONS MADE  
IN THE ARTICLES PUBLISHED ON RIGHT TO  
INFORMATION ACT-2005 & ORISSA RIGHT TO  
INFORMATION RULES-2005 AS WELLAS OTHER  
RELATED MATTERS ARE PERSONAL TO THE  
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