

Peoples' Monitoring of the RTI Regime in India

2011-13



**PEOPLES' MONITORING OF THE RTI REGIME IN
INDIA
2011-13**



RTI Assessment and Advocacy Group



Samya- Centre for Equity Studies

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&

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This study is part of an ongoing series of studies on various aspects of the implementation of the RTI regime in India, which was initiated with the first RaaG study completed in 2009. The 2009 assessment studied the evolution and functioning of the regime from its start, in 2005, till 2008-09. The current study, though smaller in scale and scope, covers the period 2011-13, and uses a similar methodology and sample as the first study, so that a comparative picture can emerge after a period of three years.

In the coming months we also expect to complete the ongoing analysis of the Supreme Court and high court orders relating to the RTI, an assessment of the orders of a sample of information commissions and commissioners, an analysis of the role of media in RTI, a report on the potential for invoking section 2f of the RTI Act and accessing information from the private sector, and an assessment of how NGOs have performed as public authorities under the RTI Act.

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GLOSSARY OF TERMS AND ABBREVIATIONS

Term/Abbreviation	Explanation/Expansion
A&N	Andaman & Nicobar
ACRs	Annual Confidential Reports
ANA	Anantapur (district in Andhra Pradesh)
ANC	<i>African National Congress</i>
<i>Anganwadi</i>	A 'courtyard shelter' for the children, women and adolescents related services provided under the governmental scheme Integrated Child Development Services (ICDS).
<i>Antyodaya (scheme)</i>	The <i>Antyodaya Anna Yojana</i> (AAY) is a governmental scheme, launched in 2000 which aims to provide food-based assistance to destitute households.
AP	Andhra Pradesh
APIO	Assistant Public Information Officer
ARU	Arunachal Pradesh
ASI	Assistant sub-inspector (of police)
ASS	Assam
AVG	Average
<i>Azad Hind Fauj</i>	Indian National Army – a pre-independence army under Subhash Chandra Bose set up to fight against British colonialists in India
BC	Banker's Cheque
BIH	Bihar
BJP	Bharatiya Janata Party
BPL	Below Poverty Line
BPSC	Bihar Public Service Commission
CBSE	Central Board of Secondary Education
CEN	Central / Central Ministries
CEO	Chief Electoral Officer
CES	Centre for Equity Studies
CHA	Chandigarh
<i>Challan</i>	An official form or document, such as a receipt, invoice, or summons
CHH	Chhattisgarh
CI	Circle inspector (of police)
CIC	Central Information Commission
CM	Chief Minister
CPI	Communist Party of India
CPIO	Central Public Information Officer
CPM	Communist Party of India (Marxist)
DC	District Collector
DD	Demand Draft
DDA	Delhi Development Authority
DEL	Delhi
Dept.	Department
DGCA	Directorate General of Civil Aviation
DGP	Director General of Police
DHFW	Department of Health and Family Welfare
Distt	District
DND	Daman and Diu
DNH	Dadra and Nagar Haveli
Docs.	Documents
Doordarshan	Government of India's public service television broadcast channel
DoPT	Department of Personnel and Training
DRD	District Rural Development
DRDA	District Rural Development Agency
DSJ	Department of Social Justice and Empowerment

DSW	Department of Social Welfare
DUN	Dungarpur (district in Rajasthan)
DUSIB	Delhi Urban Shelter Improvement Board
EAC	Environment appraisal committee
EC	Environmental clearance
ECOAF	Economic Affairs
ENG	English
ENVIS	Environmental Information Systems
EPI	Elector's photo identity
ERNET	Education & Research Network
FA	First Appeal
FAA	First Appellate Authority
FGD	Focus Group Discussion
FIR	First Information Report (filed with the police)
<i>Firangi Raj</i>	A slang used for foreign (British) rule in India
FOI	Freedom of Information
GAD	General Administration Department
GD (entry)	General Diary (entry)
GOP	Gopalganj (district in Bihar)
Govt	Government
<i>Gram panchayat</i>	A local self-government institution at the village level
<i>Gram Sevak</i>	A village level government official
<i>Grameen Vikas Vibhag</i>	Department of Rural Development
GUJ	Gujarat
HAR	Haryana
HIN	Hindi
HP	Himachal Pradesh
HQ	Headquarters
IAS	Indian Administrative Service
IAY	<i>Indira Awas Yojna</i> – a national housing scheme for the poor named after Indira Gandhi
IC	Information Commission / Information Commissioner
ICAI	The Institute of Chartered Accountants of India
ICDS	Integrated Child Development Services
IMDT (Act)	Illegal Migrants (Determination by Tribunal) Act
INC	Indian National Congress
Info	Information
IPO	Indian Postal Order
IPS	Indian Police Service
IS	Internal Security (division)
IT	Information Technology
<i>Jan-sunvayi</i>	Public Hearing
JCB	A machine used for digging purposes
JHA	Jharkhand
JJ	<i>Jhuggi Jhopadi</i> (poorly constructed temporary house)
JOR	Jorhat (district in Assam)
<i>Jugaad</i>	An Indian way for an innovative fix or a simple work-around for any task
<i>Kachha</i>	Temporary or weak, often used to describe a building/house, made of mud/clay/cow dung and straw, or tin, plastic sheets and other such
KAR	Karnataka
KAR	Karbi Anglong (district in Assam)
KAR	Karauli (district in Rajasthan)
KER	Kerala
<i>Khasra</i>	A land demarcation unit

KHC	Karnataka High Court
KIC	Karnataka Information Commission
<i>Kumari</i>	Title for unmarried woman
LAK	Lakshadweep
<i>Lok Sewa</i>	People's welfare
MAH	Maharashtra
<i>Mandal</i>	Sub-district administrative unit
MEA	Ministry of External Affairs
MEG	Meghalaya
MGNREGA/MNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
MHA	Ministry of Home Affairs
Mins	Ministries (chapter 8, charts)
Misc	Miscellaneous
MIZ	Mizoram
MLA	Member of Legislative Assembly
MLALAD	Members of Legislative Assembly Local Area Development (fund)
MOC	Ministry of Culture
MoC&IT	Ministry of Communication & Information Technology
MOEF	Ministry of Environment and Forests
MOF	Ministry of Finance
Mol&B	Ministry of Information and Broadcasting
MOSJ / MOSJE	Ministry of Social Justice and Empowerment
<i>Mouza</i>	An administrative district (in Pakistan), corresponding to a specific land area within which there may be one or more settlements
MoWCD	Ministry of Women and Child Development
MP	Member of Parliament
MP	Madhya Pradesh
MPLAD	Member of Parliament Local Area Development (fund)
MRD	Ministry of Rural Development
MVI	Motor Vehicle Inspection
NABARD	National Bank for Agriculture and Rural Development
NAC	National Advisory Council
NAG	Nagaland
NAI	National Archives of India
NAL	Nalbari (district of Assam)
NCC	National Cadet Corps
nd	Not dated
NGOs	Non-governmental organisations
NIC	National Informatics Centre
<i>Nirbhaya</i> (fund)	A government fund to support initiatives towards protecting the dignity and ensuring safety of women in India
no.	Number
NREGA	National Rural Employment Guarantee Act
NRLW	Northern Railway
NRLY	Northern Railway
NW	North West
OBC	Other Backward Classes
ODI	Odisha
OM	Office Memorandum
Org	Organisation(s)
PA	Public Authority
PAIA	Promotion of Access to Information Act (of South Africa, 2000)
<i>Panchayat</i>	A village council or a village council area
PCR	Police Control Room

PDS	Public Distribution System
PERSMIN	Department of Personnel / Ministry of Personal Grievances and pensions
PG	Post Graduate
PH	Public Hearing
PHED	Public Health Engineering Department
PIO	Public Information Officer
PM	Prime Minister
PMGSY	<i>Pradhan Mantri Gram Sadak Yojana</i> (a rural roads scheme)
PMO	Prime Minister's Office
POL	Police
PS	Police station
<i>Pucca</i> (house)	A permanent building/house made of cement/concrete
PUD	Puducherry / Pondicherry
PUN	Punjab
PUR	Purnea (district in Bihar)
RaaG	Right To Information Assessment and Advocacy Group (earlier known as 'Assessment and Analysis Group')
RAJ	Rajasthan
RD	Rural Development
RDO	Rural Development Organisation
Recvd	Received
REV	Revenue
RISL	RajCOMP Information Services Limited (information service of the Government of Rajasthan)
RLA	Rajasthan Legislative Assembly
RTI	Right to Information
RWAs	Resident Welfare Associations
S.no.	Serial number
<i>Samiti</i>	Committee/association
<i>Sarpanch</i>	Elected head of the village council (<i>panchayat</i>)
<i>Satra</i>	Holy place(s) in Assam
SC	Supreme Court
SC	Scheduled Caste
SCI	Street Corner Interview
SCZMA	State Coastal Zone Management Authority
SEZ	Special Economic Zone
SGSY	<i>Swarnajayanti Gram Swarozgar Yojna</i> (a government scheme to promote self-employment in rural areas through self-help groups)
SHGs	Self Help Groups
<i>Shri</i>	Male title, like Mr. in English
<i>Shrimati</i>	Title for married female, like Mrs. In English
SHO	Station House Officer
SI	Sub-inspector (of police)
SIC	State Information Commission
SIK / SIKK	Sikkim
SLP	Special Leave Petition (in a court)
SSC	Staff Selection Commission
ST	Scheduled Tribe
STA	State
STEP	Special Terms for Economic Partnership
TC	Treasury <i>Challan</i>
Tel.	Telephone
<i>Tehsil</i>	An administrative division at the sub-district level of the villages in India
<i>Tehsil divas</i>	An occasion or event at the administrative division at the sub-district level.
<i>Tehsildar</i>	A government official at the sub-district level

TN	Tamil Nadu
TRI	Tripura
TV	Television
UoI	Union of India
UP	Uttar Pradesh
UPA	United Progressive Alliance
UPSC	Union Public Service Commission
UTs	Union Territories
UTT	Uttarakhand
<i>Vibhageey</i>	Departmental
VIG	Vigilance department
VIS	Visakhapatnam (district in Andhra Pradesh)
VOs	Voluntary Organisations
WB	West Bengal
WCD	Women and Child Development (department)
WPC	Wireless Planning and Coordination Wing (of the government)
YASHADA	Yashwantrao Chavan Academy of Development Administration (Pune)
<i>Yatra</i>	A pilgrimage

KEY FINDINGS AND RECOMMENDATIONS

I. Awareness of the RTI Act

- A. Improving awareness:** *There is poor awareness about the RTI Act, worse in rural areas than in urban areas. In 64% of the rural focus group discussions (FGDs) and 62% of urban FGDs, no participant had heard of the RTI Act! In the state headquarters and in Delhi, 61% of the respondents interviewed through street corner interviews said that they had heard about the RTI Act.*

Recommendations:

1. There continues to be an urgent need for a concerted and professional approach to increasing awareness among the public. A task force needs to be set up by the Government of India, chaired by an eminent media personality or public communications expert, to design and implement suitable public awareness programmes for the RTI. In addition, information regarding the RTI Act and its relevance to the people should be imparted along with information about other basic rights, highlighting how the RTI Act can be used to ensure access to these other rights. This would not only contextualize information about the RTI Act but also raise awareness about other rights. **[ACTION: DoPT, MoI&B, NGOs, media houses, television channels, folk theatre groups]**
2. Case studies and other material, including research findings, newspaper and other media reports, and interviews with people active in the area, should be made available to creative people in the broadcasting and television industry to inspire them to fictionalize RTI stories and popularize the concept through television serials and advertisements in Hindi, English and various regional languages. Dedicated programming on RTI awareness could be broadcast on national TV and radio, and also disseminated through social media, the web, and through whatever other means are available. **[DoPT, MoI&B, NGOs, media houses, television channels, folk theatre groups]**
3. A module on RTI should be made mandatory (though without credits) in school curriculum for 11th and 12th classes, and for all undergraduate and postgraduate courses in India. **[MoHRD]**
4. Perhaps self-help groups (SHGs) could be mandated to spread awareness about the RTI Act and facilitate the filing of applications and appeals. Information about RTI should also be displayed outside schools, colleges, universities, dispensaries, bus stops etc. **[MoRD, DoPT]**
5. In many rural areas, school teachers are an important source of information and support to rural communities. It might, therefore, be useful to train them in the use of the RTI Act. Special programmes can accordingly be organised and incentives offered to these teachers. **[MoHRD]**

II. Use of the RTI Act and nature of information sought

- B. Gender concerns:** *The participation of women in the RTI process, especially as applicants, has been minimal, with a national average of 8%, and two states – Assam and Rajasthan - recording 4%. Bihar recorded an abysmal 1%, though with a truncated sample. Many reasons can be attributed for this gender imbalance, but there is no scientific understanding of why so few women file RTI*

applications. If RTI is a means of empowerment, then there should be a special focus on ensuring that women are aware of the RTI Act and willing and able to use it.

Recommendations:

6. The Government of India, perhaps through the Ministry of Women and Child Development, should have a national assessment urgently carried out to determine the reasons why women are hesitant, or unable, to participate in the RTI process. **[DoPT, MoWCD]**
7. In the meanwhile, a special task force should be constituted to formulate and help implement appropriate strategies to make women aware of the provisions of the RTI Act, its significance to their lives, and the procedures to be followed in order to access information. **[DoPT, MoWCD, MoI&B]**

C. *The rural-urban divide:* *Only 14% of the applicants were from rural areas, even though over 70% of India's population lives in rural areas. Though the sample might have a bias in favour of urban areas, even after adjusting for such a bias, the proportion is too small. Awareness levels about the RTI also seem low in rural areas.*

Recommendations:

8. An assessment needs to be carried out to determine the reasons why there is such poor participation by rural populations in the RTI process, especially as applicants. **[DoPT, MoRD]**
9. Very little effort, in general, seems to have been made by the central government and most of the state governments to raise awareness about the RTI. Whereas in urban areas there are many other methods by which the public can learn about the RTI and its uses and processes, special attention needs to be paid to rural areas. Therefore, the task force discussed in recommendation 1 above should have a special focus group created to design and help implement special initiatives aimed at raising awareness about the RTI in rural areas. To start with, teams using a mix of traditional and modern methods of communication, including song and dance, folk theatre, films, posters, etc. could move from village to village. **[DoPT, MoI&B, MoRD, NGOs, media houses, television channels, folk theatre groups]**

D. *Grievance redress mechanisms:* *80% of respondents in rural FGDs, and 95% in urban FGDs, said that they wanted to use the RTI Act in order to seek redress of their grievances. Analysis of RTI applications showed that at least 16% of the applicants were seeking information that was aimed at getting action on a complaint, getting a response from a public authority, or getting redress for a grievance.*

Recommendations:

10. The Parliament urgently needs to pass the Grievance Redress Bill (which was introduced in Parliament in 2011 but lapsed with the dissolution of the 15th Lok Sabha) so that independent grievance redress authorities can be set up to provide decentralised and time-bound redress. This will not only release pressure from the RTI system, where a large number of applications are actually disguised complaints and grievances, but also ensure that instances of delay, wrong doing or inaction can be independently and speedily adjudicated and corrective action initiated. **[DoPT]**

III. Ease and certainty of access to information

- E. *Ineffectual first appellate process:*** Except for first appeals filed with the central government or Delhi government, there is less than 4% chance of getting any information by filing a first appeal.

Recommendations:

11. Wherever Information Commissions find that the first appellate authority has either not responded in time or rejected a request for information which is not exempt under the RTI Act, Commissions should use their powers under Section 18 to summon the first appellate authority to appear before the Commission. This would not only help educate first appellate authorities on what are invalid reasons for rejecting information, but would also perhaps motivate them to be more careful about timely disposal of first appeals, the application of mind, and conformity with the law, before taking a decision **[Information Commissions]**.
12. A standardized format for orders of the first appellate authority needs to be adopted to ensure that at least the basic information about the case and the rationale for the decision is available in the order. Each order needs to be a speaking order and contain at least the date of the application; description of the information asked for; date of response, if any; nature of response; reasons given for refusal, if relevant; legal basis and rationale for the order of the first appellate authority, especially if the request for information is rejected. **[DoPT, nodal departments]**

- F. *Threats to applicants:*** Applicants, especially from the weaker segments of society, are often intimidated, threatened and even physically attacked when they go to submit an RTI application, or as a consequence of their submitting such an application.

Recommendations:

13. Complaints of such intimidation, threat or attack to ICs must be treated as complaints received under S. 18(1)(f) of the RTI Act and, where prima facie merit is found in the complaint, the IC should institute an enquiry under S. 18(2) read along with S. 18(3) and 18(4). **[CIC, SICs]**
14. Such intimidation, threat or attack, in so far as it is an effort to deter the applicant from filing or pursuing an RTI application, can clearly be considered as obstruction and falls within the gamut of S. 20(1) as a penalisable offence. Therefore, where the enquiry establishes the guilt of a person who is a PIO, the IC must impose a penalty which is both appropriate to the case and acts as a deterrent to other PIOs. If required, the IC should make a report to the police for criminal proceedings. **[CIC, SICs]**
15. Where the guilty party is not a PIO, the IC must establish a tradition of passing on the enquiry report to the police, where a cognizable offence is made, or otherwise to the relevant court, and use its good offices (and its moral authority) to ensure that timely and appropriate action is taken. **[CIC, SICs]**
16. Where an enquiry establishes threat or intimidation, or where an applicant or appellant is grievously hurt or killed, and there are reasonable grounds to believe that the attack on her was most likely because of the information she was trying to access, public authorities and information commissions should take cognizance of this and immediately ensure that all the information that was being requested for, and that could have been legally disclosed, is put into the public domain. This would ensure that, if the purpose of the attack was to prevent such information from being disclosed, that purpose is defeated. Further, if disclosure

through this route is faster and certain, it would deter attacks on applicants and appellants. This is also in keeping with the decision of the Central Information Commission¹ and deserves emulation by all other information commissions and by public authorities. **[ICs]**

17. Following the example of the Government of India, it would be a good idea if post offices across the country are made universal APIOs, so that any applicant can file an application in any post office pertaining to any public authority. This would also otherwise facilitate the filing of RTI applications, especially for the rural applicant. **[DoPT, appropriate governments, competent authorities, Department of Post]**
18. All state governments and local governments should put in place a mechanism for online filing of RTI applications, along the lines of the web portal set up by the central government (rtionline.gov.in). Further, the online portals should also provide facilities for electronic filing of first appeals, and second appeals/complaints to the information commissions. Filing of applications on telephone, as discussed later, should also be facilitated. **[DoPT, appropriate governments, competent authorities, information commissions]**
19. The Whistle Blowers' Protection law passed by Parliament in February 2014 needs to be urgently operationalized by framing appropriate rules. Awareness about the provisions of the law should be created to ensure that people who are being threatened or victimised as a result of seeking information and exposing corruption, can seek redress under the law. **[DoPT, appropriate governments, competent authorities, information commissions]**

G. Reducing the need to file RTI applications: *Certain public authorities, especially those with extensive public dealing (like municipalities, land and building departments, police departments, etc.) receive a disproportionate share of RTI applications compared to other public authorities. In some cases there is resentment among PIOs as they have to deal with a large number of RTI applications in addition to their normal work.*

Recommendations:

20. Without illegitimately curbing the citizen's fundamental right to information, there are various ways of ensuring that the numbers of RTI applications received by a public authority do not become unmanageable. First, each public authority should assess every three months what types of information are being sought by the public. As far as possible, the types of information that are most often sought should then be proactively made available, thereby making it unnecessary for the citizen to file and pursue an RTI application. **[DoPT, appropriate governments, competent authorities, public authorities]**
21. Second, most often RTI applications are filed because there are unattended grievances that the public has with the public authority. These are mostly about delays, lack of response to missives and queries, not making the basis of decisions public, seemingly arbitrary or discriminatory decisions, norms, rules or laws that are not easily accessible to the public, and non-disclosure of routine information that should have been disclosed even without the RTI. If heads of public authorities periodically (say once in six months) reviewed the basic

¹ The Central Information Commission passed a resolution on 13.9.2011 in which it resolved, "that if it receives a complaint regarding assault or murder of an information seeker, it will examine the pending RTI applications of the victim and order the concerned Department(s) to publish the requested information suo motu on their website as per the provisions of law."

reasons behind the RTI applications received, they could initiate systemic changes within the PA that would obviate the need to file these applications. Besides, such systemic changes would ensure that the benefits of the enhanced transparency and accountability consequent to the RTI Act do not go only to those who actually use the Act, but to even those who might be too poor or otherwise unable to take advantage of it. This would prevent the creation of an “RTI divide” where those who could and did use the RTI Act were well served, but at the cost of those who were too poor, illiterate or otherwise unable to use it. **[DoPT, state nodal departments, competent authorities, public authorities]**

22. Another practice that would minimize the work load of many public authorities is the putting of all RTI queries and the answers given (except where the information relates to private matters) in the public domain, in a searchable database. This would allow people to access information that has already been accessed by someone earlier without having to resort to filing an RTI application. Though the DoPT has already vide its memorandum No.1/6/2011-IR, dated 15th April 2013, directed that “All Public Authorities shall proactively disclose RTI applications and appeals received and their responses, on the websites maintained by Public Authorities with search facility based on key words”, this hardly seems to have had an impact even on PAs of the Government of India. Therefore, the DoPT and the state governments need to push harder for this to happen, and the ICs should also take cognizance of this and “require” the PAs to comply, using the powers provided under. S. 19(8)(a)(iii). **[DoPT, state nodal departments, ICs]**

IV. Public authorities of the government

- H. Proactive disclosures:** *Nearly 70% of the RTI applications seek information that should have been proactively made public without citizens having to file an RTI application. 49% sought information which should have been proactively provided under section 4 of the RTI Act (or other similar sections in other laws), while 18% sought information that should have been proactively provided to the applicant without her having to file an RTI application either because they were responses that should have been given as per prescribed office procedures² or under other laws.*

Despite a very strong provision for proactive (suo motu) disclosure under section 4 of the RTI Act, there is poor compliance by public authorities. This forces applicants to file applications for information that should be available to them proactively, and consequently creates extra work for themselves, for the concerned public authorities, and for information commissions. 65% of the PA premises inspected did not have a board with the required proactive disclosures and 59% did not have any publications or other material available in their office which the public could inspect in order to access the information that should be proactively available.

Recommendations:

23. Given the very poor implementation of section 4 by most public authorities, the DoPT and the state nodal agencies should direct all PAs to designate one or more PIOs as responsible for ensuring compliance with all the provisions of section 4. Where these directions are not complied with by the PAs within a reasonable period, the ICs should use s. 19(8) (a) (ii) to

² See point 66 of http://darpg.gov.in/darpgwebsite_cms/Document/file/CSMOP.pdf

“require” that each PA designate one or more PIOs responsible for ensuring compliance with all the provisions of section 4. **[DoPT, state nodal departments, ICs]**

24. Subsequently, where a complaint is received against non-compliance with any provision of section 4, especially 4(1) (b), (c), and (d), the commission should institute an enquiry under s. 18(1)(f) read with s. 18(2) of the RTI Act, against the designated PIO or any other official responsible, as per S. 5(4) and 5(5) of the RTI Act. If the PIO or any other official is found guilty, an appropriate penalty should be imposed by the IC, under s. 20(1) of the RTI act. **[CIC, SIC]**
25. Where an appeal or complaint comes before an IC relating to information that should rightly have been made available *suo motu* under section 4 of the RTI Act, but was not, the IC should also exercise its powers under S. 19(8)(b) and award compensation to the appellant/complainant for having to waste time and energy seeking information that should have been provided proactively. The IC should also direct the PA to provide the information free of cost. This can be done even for those PAs where no PIO has been designated to ensure compliance with s. 4, and will not only encourage the PA to so designate PIOs and fully comply with s. 4, but also encourage applicants to complain against PAs that are not complying with S.4. **[CIC, SIC]**
26. To ensure that the information proactively put out is up to date, the RTI nodal agencies should direct all PAs that each web site, and other medium and publication, relating to S. 4 compliance must carry the date (where appropriate for each bit of information) on which the information was uploaded/printed and the date till which it is valid/it would be revalidated. ICs should encourage compliance by imposing heavy penalties and awarding compensation, as described earlier, not just for missing information but also for outdated or wrong information that is disclosed to the public. **[DoPT, state nodal departments, ICs]**
27. Though the DoPT has developed some comprehensive templates to facilitate proactive disclosure of information³ these are not yet being widely used. Also, many more templates are required for proactive disclosure of many other types of information. Therefore, appropriate governments and competent authorities should commission professional agencies to develop additional templates and to promote their use across public authorities. A coordinated approach needs to be developed and implemented with nodal agencies and information commissions pushing public authorities to proactively disclose an increasing amount of information. Professional agencies can be encouraged to help the PAs do this, and even in some cases to take the responsibility of effectively displaying and regularly updating the information, on behalf of the PA.

In many countries, including the USA, agencies external to the PA are given the responsibility of ensuring that public declarations required under the law are easily accessible, accurate, comprehensive, and updated. Considering the information being put out in the public domain is by definition not sensitive, there is no reason why external agencies, including private parties and NGOs, cannot be contracted by PAs to manage their proactive disclosures. Their payments could be subject to their ensuring full compliance and subject

³ http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_6_2011-IR-21112013.pdf and http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/Suo_moto_disclosure-15042013.pdf

to any compensation awarded by ICs. The costs of hiring such agencies would be more than made up if the RTI applications currently asking for information such that it should have been available proactively – nearly 3 million per year according to current estimates – stopped being filed because the required information was now available proactively. Imagine the saving in paper, PIO, FAA, and IC time, and the time of 3 million applicants.

[DoPT, state nodal departments, competent authorities]

28. In addition, appropriate governments and competent authorities should encourage the setting up of information clearing houses outside the government, especially by involving NGOs and professional institutions for subjects related to their area of work. Such clearing houses could function as repositories of electronic information accessed from the concerned public authorities. They can systematically and regularly access information that is of interest to the public, demystify, contextualize, and classify it, and make it easily accessible to the public through electronic and other means. They can also send out alerts regarding information that needs the urgent attention of the general public or of some special interest groups. However, such clearing houses should not absolve public authorities of their own obligations under the RTI Act and should actually motivate governments to be more proactive and organized while disclosing information. **[Appropriate governments, competent authorities, NGOs, professional institutions]**

29. Learning from Mizoram (see Box 7.7 in Chapter 7), all appropriate governments and competent authorities should make a rule that no fee or additional fee would be charged for any application seeking information that should have been proactively provided or disclosed, but was not. ICs should also order refund of fee and additional fee when it comes to their notice that such fee has been charged for information that should actually have been, but was not, available proactively. This would encourage all PAs to ensure that all that was legally required to be proactively displayed or communicated, was being disclosed.

[DoPT, state nodal departments, competent authorities]

30. Information that is proactively disclosed must be properly categorized and organised in such a manner that it facilitates easy retrieval. Information on the website must be organised in a searchable and retrievable database to enable people to access the records. Similarly, proactive disclosures in PA premises, in the form of records open for inspection, must also be properly indexed to enable people to access this information. Otherwise, the proactive disclosure of a large amount of disorganized and unsearchable information can actually contribute to opaqueness rather than transparency. **[DoPT, state nodal departments, competent authorities]**

- I. **Record management:** One major constraint faced by PIOs in providing information in a timely manner is the poor state of record management in most public authorities.*

Recommendations:

31. Section 4(1) (a) of the RTI Act obligates every public authority to properly manage and speedily computerize its records. However, given the tardy progress in this direction perhaps what is needed is a national task force specifically charged with scanning all office records in a time bound manner and organizing them in a searchable database retrievable by key words. Apart from saving an enormous amount of time and valuable space, the

replacing of paper records by the digital version would also make it more difficult to manipulate records, or to conveniently misplace them, provided proper authentication and security protocols are followed. **[DoPT, state nodal departments, Ministry of Information Technology, National Informatics Centre]**

32. Priority should be given to scanning records at the village, block and sub-divisional level. As facilities for digitizing records are not usually available at this level, it is recommended that a special scheme for scanning rural records, using mobile vans (or “scan vans”) fitted with the requisite equipment and with their own power source and communication facilities should be commissioned to cover all rural records in a time bound manner. **[DoPT, state nodal departments, Ministry of Information Technology, National Informatics Centre, Ministry of Rural Development]**

V. Public Information Officers of the government

- J. **Training of PIOs:** Nearly 45% of the PIOs have not received any training on the RTI Act. In fact, the PIOs interviewed identified lack of training as their number one constraint. A much larger proportion of non-PIO civil servants, who have to provide information to the PIOs or function as first appellate authorities, have not been oriented and trained towards facilitating the right to information.*

Recommendations:

33. Appropriate governments and the ICs should direct all PAs and training institutions (invoking, if need be, S.19(8)(a)(v)), that apart from conducting separate training courses for PIOs/FAAs and other officers, a module on RTI should be incorporated into all training programmes, considering all government employees are subject to the RTI Act and most of them are potential PIOs or first appellate authorities. **[DoPT, CIC, SIC, state nodal departments, heads of training institutions]**
34. In order to facilitate the recommended training courses, a committee of RTI and governance experts should be constituted, also involving CICs/ICs from various states, to develop a training plan and a model syllabi for training modules at different levels of the government. This exercise can be anchored by one of the state or national training institutions. **[DoPT]**
35. Concurrently, it is also important to identify and train trainers. A roster of trainers, in different languages and for different levels of officials, needs to be developed so that training institutions have easy assured access to trained trainers. **[DoPT, state RTI nodal departments, CIC, SICs]**
36. Training material, in the form of printed material and films, also needs to be compiled and, where required, translated into various languages. State training institutes and other state level institution could be made repository libraries for training material, to be accessed by departments and institutions for use in training programmes. **[DoPT, MoI&B, state RTI nodal departments]**
37. An agency, within or outside the government, needs to be given the responsibility of periodically monitoring the state of preparedness among a random sample of PIOs and officers, in order to assess the efficacy of the training programmes recommended above, suggesting remedial measures, where required. **[DoPT, state RTI nodal departments]**

38. Advisories could be sent (perhaps once a month and at least once every three months) by Information Commissions (ICs), under section 25(5) of the RTI Act, to all public authorities bringing to their notice important interpretations of the law decided by the ICs and by High Courts and the Supreme Court, with the recommendation that these should be brought to the notice of all PIOs and maintained by them as reference material. Such advisories could also alert PAs and PIOs against common errors made by them in disposing RTI applications (like denying of information just because it is third party, or just because it is sub-judice, or just because it concerns a police investigation; or referring applicants to websites when they have asked for hard copies, or insisting that they inspect the documents, when they have specified the exact documents they want copies of). **[DoPT, state nodal departments, ICs, Ministry of Law & Justice]**
39. A website also needs to be maintained and updated weekly that reports and allows quick and easy access to orders of various ICs and courts, so that PIOs, FAAs, ICs, and judges could easily find precedents, where they exist, for matters before them. Even applicants can be guided on what they can ask and what not and when to appeal and when not to. **[DoPT, state nodal departments, ICs, Ministry of Law & Justice]**

VI. Information Commissions

- K. Delays and pendency: There are huge and growing delays in the disposal of cases in many of the information commissions, with pendency of cases growing every month. At the current levels of pendency and rate of disposal, an appeal filed today with the Madhya Pradesh SIC would be taken up for consideration only after 60 years, while the West Bengal SIC would come to it after nearly 17 years! The main reasons behind the delays seem to be the paucity of commissioners in some of the commissions and the low productivity of some of the other commissioners, mainly due to inadequate support. The additional fact that there is no legally prescribed time limit for disposing second appeals not only allows ICs to be indifferent about delays but also prevents appellants from approaching the high court.*

Recommendations:

40. There needs to emerge, through a broad consensus, agreement on the number of cases a commissioner should be expected to deal with in a month. Given an agreement on the maximum time within which appeals and complaints should ordinarily be dealt with – hopefully not more than 45 days - the required strength of commissioners in each commission can be assessed on an annual basis. The agreed norms can also be made public, so that appellants and complainants know what to expect. Interestingly, the CIC has reportedly adopted a norm of 3200 cases per commissioner, per year. Similar norms need to be developed by all state commissions, or at least those that have a pendency greater than 45 days. **[CIC, SICs]**
41. There is a concomitant need to develop a consensus among information commissioners, across the country, on norms for budgets and staffing patterns of ICs, based on the number of cases to be dealt with by each commissioner, and other relevant state specific issues. Presumably, in order to meet reasonable norms, as discussed earlier, a certain amount of support is required, and that should also be mandated as a pre-condition to the norms being followed. In the CIC many of the commissioners (perhaps all) have legal consultants, who

are usually lawyers and advise commissioners on the law and the legal processes, while assisting them in the handling of matters. These are all possibilities that must be seriously explored in order to ensure that the agreed to norms are followed and pendency and delay is minimized. **[CIC, SIC, DoPT, appropriate governments]**

42. In those commissions where the number of appeals and complaints are so high that even if the commissioners followed the norms related to the number of cases to be dealt with each year, they could not maintain the 45 day maximum pendency time (recommended above), there should be a provision to appoint more than the 11 ICs currently permitted under the law. In the meanwhile, wherever there is potential, additional staff should be provided to enable each commissioner to be even more productive than the norm requires. However, it must be ensured that in an effort to make haste the principles of natural justice are not compromised while disposing appeals and complaints. **[DoPT, state nodal departments, ICs, Ministry of Law & Justice]**
43. Newly appointed information commissioners must be provided an opportunity to orient themselves to the law and case law. Incumbent commissioners should have an opportunity to refresh their knowledge and understanding and to discuss their experiences and thinking with commissioners from other commissions, and with experts from outside the information commissions. Towards this end, it might be desirable to link up with national institutions like the National Judicial Academy, in Bhopal, and request them to organize orientation and refresher workshops, the latter over the weekend, in order to minimize disruption of work. This is similar to the workshops being organized by them for High Court judges. Other state and national institutions could also be identified for this purpose and support could be sought from international agencies to organize regular physical and internet interactions between information commissioners in India and in other countries of the region which have similar laws.**[CIC, SIC, DoPT]**
44. There also needs to be a standardized format for IC orders that ensures that at least the basic information about the case and the rationale for the decision is available in the order. Each order needs to be a speaking order and contain at least the date of the application; description of the information asked for; date of response, if any; nature of response; reasons given for refusal, if relevant; legal basis and rationale for the order of the commission; whether the actions of the PIO attract a penalty under any of the grounds laid down in section 20 of the Act; legal basis and grounds relied on by a commissioner if a penalty is not imposed despite existence of any of the circumstances mentioned in section 20. This again needs to be discussed with other stakeholders and agreed to by the community of information commissioners. **[CIC, SIC, DoPT]**
45. Wherever a commissioner is due to demit office in the regular course of time (by way of retirement), the government must ensure that the process of appointment of new commissioners is done well in advance so that there is no gap between previous commissioner demitting office and a new one joining in. **[DoPT, appropriate governments]**

- L. Enforcing orders:** *Often, orders of information commissions are not heeded to by the concerned public authority, and even penalties that are imposed are not recovered. Many commissions do not have effective methods of monitoring or enforcing compliance.*

Recommendations:

46. All ICs must fix a time limit within which their orders have to be complied with and compliance reported to the commission in writing. Every order of the commission where some action is required to be taken by a public authority should also fix a hearing two weeks after the time given for compliance is over, with the proviso that the IC will only have a hearing if the appellant appeals in writing that the orders of the commission have not been complied with. Where no such complaint is received, the hearing should be cancelled and the orders assumed to have been complied with, unless evidence to the contrary is presented subsequently. **[CIC, SIC]**
47. Where there is a lack of compliance by a PIO, automatically show cause notices should be issued for imposition of penalty and unless compliance follows in a reasonable time, penalty should invariably be imposed. For this to be possible, the cases must not be closed till compliance is confirmed or assumed because of no evidence to the contrary. **[CIC, SIC]**

- M. Imposing penalties:** *A very small proportion of the penalties imposable under the RTI Act (less than 3.7% on the basis of our current estimate) are actually imposed by commissions. Though further research needs to be done on this aspect, preliminary data suggests that there is a correlation between the number of penalties imposed and both the willingness of PIOs to make information available, and the number of appeals and complaints that land up with information commissions.*

Recommendations:

48. Information commissioners across the country should get together and collectively resolve to start applying the provisions of the RTI Act more rigorously, especially those dealing with the imposition of penalties. Nine years have passed since the Act came into effect, and this is more than enough time for the government and the PIOs to prepare themselves to implement it. **[CIC, SIC]**
49. At the same time, a dialogue needs to be initiated between the public and information commissions to discuss why they are not imposing penalties, even where clearly no reasonable ground exists for delay or refusal of information, among other violations. To that end, it is required that groups of interested citizens join hands with the media, legal professionals, and progressive former civil servants and judges, and start analyzing orders of commissions on a regular and systematic basis, so that a meaningful dialogue can be initiated with commissions on the need and legal justification for imposition of penalties. **[NGOs, people's movements, ICs]**
50. The commissions should maintain a detailed database of the penalties imposed by them, including the name and designation of the PIO, quantum of penalty imposed, date of imposition, time-frame within which penalty is required to be paid. This would enable Commissions to identify repeat offenders, who after they have been held in violation of the RTI Act three times should be given a written warning by the concerned IC, and after five violations the Commission should recommend the initiation of disciplinary proceedings against the PIO as per the provisions of section 20. **[ICs]**

51. The decision to impose a penalty is taken on the basis of the facts of the case. In accordance with the principle of natural justice, both the PIO and the appellant should be invited for all penalty/show cause hearings and a copy of the reply of the PIO to the show cause notice should be provided to the appellant in time to enable her to counter the claims of the PIO, where required. **[ICs]**

N. Practicing transparency: *Unfortunately, many of the information commissions do not themselves follow the requirements of section 4 of the RTI Act. Most of their websites are outdated with very sparse details and much of the required information missing.*

Recommendations:

52. Each information commission must ensure that all important information must be displayed on their websites. This includes up to date and real-time information about the receipt and disposal of appeals and complaints, and copies of orders passed by commissions. The information should be updated at least weekly, if not daily. **[ICs]**
53. Information commissions must also ensure that, as legally required, they submit their annual report to the Parliament/state assemblies in time. The relevant standing committees of Parliament and legislative assemblies should treat the submission of annual reports by ICs as an undertaking to the house and demand them accordingly. **[ICs, Speakers of the Parliament and state assemblies]**

O. Independence of commissions: *Many information commissioners feel that their dependence on the government for budgets, sanctions and staff seriously undermines their independence and autonomy, and inhibits their functioning.*

Recommendations:

54. The budgets of information commissions must be delinked from any department of the government and should be directly voted by the Parliament or the state assembly, as the case may be. The chief information commissioner should be the sanctioning authority with full powers to create posts, hire staff, and incur capital and recurring expenditure, in accordance with the budget, based on budget norms developed for information commissions across the country. Perhaps the model prescribed for the Lokpal in the recently passed Lokpal act of 2014 would be appropriate for information commissions. Section 13 of the Lokpal act states:

“The administrative expenses of the Lokpal, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees or other moneys taken by the Lokpal shall form part of that Fund”

Section 10(3) of the Lokpal act further specifies:

“The appointment of officers and other staff of the Lokpal shall be made by the Chairperson or such Member or officer of Lokpal as the Chairperson may direct.”

Similar provisions need to be made for the information commissions. **[DoPT, appropriate governments]**

P. Composition of commissions: *The composition of information commissions across the country has a bias towards retired government servants. It is desirable to have a more balanced composition so that diverse expertise is represented in the commission.*

Recommendations:

55. Towards this end, the process of short-listing candidates for appointment to information commissions must be participatory and transparent, allowing public consultation and debate before a short-list is finally sent to the selection committee. The criteria used for short listing and for selection must be made public. Perhaps the procedure laid down in the Lokpal Act can also be applied here, and a search committee of independent eminent experts be set up and asked to recommend names. **[DoPT, appropriate governments]**

VII. Nodal Agencies

- Q. Rationalising rules:** *All state and union territory governments (a total of 34), all the high courts (23) and legislative assemblies (29), the central government, the Supreme Court and both houses of Parliament have a right to make their own rules. This can result in 90 different sets of rules in the country. In addition, the 28 information commissions also have their own procedures, as formulated by the appropriate governments, resulting in a total of 118 sets of rules relating to the RTI in India! Consequently, an applicant is confronted with the often insurmountable problem of first finding out the relevant rules and then attempting to comply with the application form, identity proof, or mode of fee payment requirements, which differ from state to state and are often virtually impossible to comply with.*

Recommendations:

56. The Government of India needs to develop a consensus among all appropriate governments and competent authorities on a common set of minimum rules that would enable applicants residing in one state to apply for information in any other state, without first having to find, study and understand the rules of each state and competent authority. **[DoPT, appropriate governments, competent authorities]**
57. Though, given the provisions of the RTI Act, it might not be possible or even desirable to insist on total uniformity, at least the basic application fee should be the same. There should be at least one mode of payment (perhaps the most widely accepted postal orders and the suggested postage stamp – as recommended elsewhere in this report) that should be accepted by all states and competent authorities. The DoPT, vide their notification NO.F. 1/5/2011 – IR dated April 26, 2011, has already asked all appropriate governments and competent authorities to conform to Government of India pattern of fees and costs. However, there are still many irrationalities in the fee structure and the DoPT needs to persist with this effort. Appropriate governments and competent authorities must be prevented from prescribing exorbitant application or photocopying fee. Whereas an exorbitant fee might deter a few non-serious applicants, it would be in violation of section 7(5) of the RTI act, and would prevent a large number of poor people from exercising their basic right, thereby defeating the main purpose of the RTI Act. **[DoPT, appropriate governments, competent authorities]**
58. All applications with at least the following three bits of information: name of the public authority, details of the information sought, and name and address of the applicant, should be accepted by all public authorities. Where exemption under BPL category is sought, a copy of the BPL ration card or BPL certificate from an authorized government functionary should be accepted by all. The tendency, as in some states and among some competent authorities,

to insist on additional information, like proof of identity, should be prohibited as per section 6(2) of the RTI act. **[DoPT, appropriate governments, competent authorities]**

59. Given the fact that the RTI Act is a national law which facilitates any Indian asking for information of any public authority, there are bound to be many applications filed by people who do not come from the area where the public authority is located, or do not speak the local or official language of that region. At present, responses to RTI applications and even appeals are often sent in the local language, even when the original application is in Hindi or English. It should become mandatory for all public authorities at least down to the district headquarters level, to respond to applications in the language that they are written, in so far as this is Hindi, English or the local official language. Information commissions should also follow, at a minimum, the same principle, though where possible it would be desirable if their orders were both in English and in the language of the appeal where that was other than English. **[DoPT, appropriate governments, competent authorities, ICs]**
60. Similarly, basic rules for filing first and second appeals must also be uniform across the country, so that people are enabled to pursue their applications (even where there is a deemed refusal or no response from the first appellate) without having to study 118 sets of rules. **[DoPT, appropriate governments, competent authorities]**
61. Meanwhile, the DoPT and nodal departments in appropriate governments should ensure that updated versions of all the 118 sets of rules relevant to different governments/competent authorities/ICs in India are on their website. **[DoPT, appropriate governments]**
62. Given how difficult it sometimes is to pay the fee and additional costs involved in accessing information under the RTI act, a special effort needs to be made to ensure easy payment of fees and other costs. Though the Indian Postal Orders (IPOs) are the easiest of the currently allowed modes of payment, especially for those who do not live close to the public authority or do not want to go personally and pay in cash, and also most widely accepted among appropriate governments, they are not easy to purchase, especially in rural areas and in the denominations required. Rather than introducing a new instrument for payment of fees, perhaps all states and competent authorities can be persuaded to accept unused postage stamps (including post cards) as a means of payment. These are widely available and arrangements can be made with the local post offices so that those of the stamps that cannot be consumed in the PA can be deposited with post offices against receipts. Where the amount is large, especially where a large number of pages have to be photocopied, all public authorities should be willing to accept money orders. **[DoPT, department of post, appropriate governments]**

R. Monitoring and advisory body: *The mechanisms for monitoring the implementation of the RTI Act, and for receiving and assimilating feedback, are almost non-existent.*

Recommendations:

63. There needs to be constituted a National Council for the Right to Information, to monitor the implementation of the RTI Act and to advise the government from time to time on the measures that need to be taken to strengthen its implementation. This council should be chaired by the concerned Minister and have as members, apart from people's representatives, nodal officers from various state governments on a rotational basis. The

Central Chief Information Commissioner and chief information commissioners from a certain number of states, on a rotational basis, should be permanent invitees to the Council.
[DoPT]

VIII. International experiences

- S. Information publication scheme:** *There is an Information Publication Scheme provided for in the statute in Australia and later adopted by UK too. In this scheme the Information Commission asks each agency to publish on its own, information on its functioning. The Commission guides the agency and approves the publication scheme.*

Recommendations:

64. As already discussed, proactive disclosure is a real challenge in India too. Perhaps it would be worthwhile to study the Australian and British experience and see whether the institution of a scheme and the greater involvement of the information commission could improve proactive disclosure in India. [DoPT]

- T. Political parties and the RTI:** *Nepal has included the functioning of a political party and any NGO with full /part government funding in the agencies whose information can accessed.*

Recommendations:

65. Though the Indian law includes NGOs, it does not specifically include political parties under its purview. However, in so far as most political parties receive financial support from the government they have been adjudged to be public authorities by the Central Information Commission. Unfortunately, though the order of the CIC was passed in June 2013, the concerned political parties do not appear to be complying with the order. The CIC must take cognisance of this and take further action to ensure compliance. [CIC]

- U. Selecting information commissioners:** *Process of appointment of information commissioners is comparatively more participatory and open in Canada and Scotland. Both countries go through a series of approvals by the Parliament of candidates who are competitively short-listed. The transparent process helps in legitimizing the position to a much greater degree than appointments that are seen to come through deliberations of the Prime Minister or government alone.*

Recommendations:

66. The process of selecting information commissioners in India is both opaque and ineffective, with what are clearly unsuitable candidates often being appointed. As already recommended, it needs to be opened up and made transparent, participatory, professional, and merit based. It would be useful to study in greater detail how the process works in Canada and Scotland and consider appropriately adopting their best practices in India.
[DoPT]

- V. Implementing IC orders:** *The orders of the Information Commission are binding on the agency in UK. If necessary, it can issue what are known as enforcement notices which, if not implemented, are treated as contempt of court for the purposes of punishment.*

Recommendations:

67. The non-implementation of IC orders has been identified as a major problem in India. By and large the ICs feel helpless and expresses the inability to ensure that PAs and PIOs follow their orders. It would be useful to give ICs contempt powers exclusively aimed at errant PIOs and PAs. [DoPT]

W. Accountability to Parliament: *Information Commissions in Canada and UK submit a detailed annual reports of their activities to the Parliament. This makes them accountable to the Parliament and also helps in making their activities transparent and available for public scrutiny.*

Recommendations:

68. Though there is a legal requirement for information commissions to submit annual reports to Parliament and state legislatures every year, very few actually do this, and even fewer do it in time. As has already been discussed earlier, there should be much greater priority attached to the timely submission of comprehensive reports to the Parliament and the state legislatures by the ICs. Violations should be treated as contempt of Parliament or legislature, as appropriate. **[DoPT]**

IX. Miscellaneous

Recommendations:

69. Though the *Jankari* scheme in Bihar, which sought to make it possible for citizens to file RTI applications over the telephone, has had mixed reviews, it nevertheless remains a good idea, especially considering over 70% of India's population is already in possession of a mobile phone, and the number is increasing daily. The details of the Bihar experience should be studied and a national scheme, building on the Bihar experience, should be launched. **[DoPT, appropriate governments]**
70. Notifications under section 24 of the RTI Act by the central and state governments, must comprehensively and explicitly specify how the organisation that is being exempted from the RTI Act fits into the definition of 'intelligence and security organisation'. This section should not be used to arbitrarily extend exemptions to organisations unless the explicit and stated role of the organisation falls within the ambit of section 24 of the Act. **[DoPT, appropriate governments]**
71. A concerted approach by appropriate governments is required to make people aware of their right, under section 2(f) of the RTI Act, to access information from private bodies, including the corporate sector, such that it can be accessed by a public authority under any other law for the time being in force. Appropriate governments should also formulate rules pertaining to the access of information under section 2(f), to specify the obligations of private bodies under the RTI Act and to clarify the procedure to be adopted by PAs in accessing and providing such information to the applicants. **[DoPT, appropriate governments]**

1. INTRODUCTION AND BACKGROUND

1.1 Evolution of RTI regime

1.1.1 Background of the RTI movement in India

Perhaps more than any other law in India, the Right to Information Act of 2005 invokes in the people of India a strong sense of ownership. For, unlike most other laws in the country, this is a legislation that has come into existence because of the efforts of tens of thousands of citizens of India who not only campaigned tirelessly but also provided the intellectual leadership for drafting the law and the rules, and for steering it through the corridors of power, resolutely defending every effort, of which there were many, to scuttle the Act or, at the very least, to hobble it so that it could have no real impact.

Though the story of the RTI Act needs to be told, this is not the right place to tell it.⁴ For the moment, a bare description of the genesis of the momentum that finally led to the enactment of what is universally recognized as among the most powerful RTI Acts in the world, should suffice to give the required background and set the context for the remaining part of the report.

There were sporadic demands for governmental transparency right since independence, and even before, however no sustained national campaign emerged till the middle 1990s. In the interim, the Supreme Court of India, in *State of UP vs Raj Narain*, 1975, ruled that: "In a government of responsibility like ours where the agents of the public must be responsible for their conduct there can be but a 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 bearings."

Subsequently, in 1982 the Supreme Court of India, hearing a matter relating to the transfer of judges, held that the right to information was a fundamental right under the Indian Constitution. The judges stated that: "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 justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest," (*SP Gupta & others vs The President of India and others*, 1982, AIR (SC) 149, p. 234).

However, despite these progressive orders of the Supreme Court of India, the government was unmoved and no serious effort was made to enact a transparency law.

⁴ For a fuller description of the process of formulating and advocating the RTI Act in India, see: Shekhar Singh, "India: Grassroots Initiatives", in Ann Florini (Ed.) *The Right to Know: Transparency for an Open World*, Columbia University Press, New York, 2007; Shekhar Singh, "The Genesis and Evolution of the Right to Information in India", *Transparent Governance in South Asia*, Indian Institute of Public Administration, New Delhi, 2011. Also available at: <http://www.iipa.org.in/www/iipalibrary/RTI-PDF/Chap--4.pdf> Prashant Sharma, *Democracy and Transparency in the Indian State: The Making of the Right to Information Act*, Routledge/Edinburgh South Asian Studies Series, 2014.

In 1984, spurred on by the disastrous gas leak in the Union Carbide plant in Bhopal, there were renewed demands from environmentalists for transparency in environmental matters. Though at least two court cases were filed and some progressive orders procured, again not much else happened.

In 1989, there was a change of government at the national level, the ruling Congress party losing the elections. There were promises by the new ruling coalition to quickly bring in a right to information law, but the early collapse of this government and reported resistance by the bureaucracy resulted in status quo.

Interestingly, in the late 1990s and the early 2000s, it was the Congress party which took the lead in enacting right to information laws in the states where they were in power. In fact, starting from the mid-1990s with Tamil Nadu, various states in India enacted transparency laws of varying description and often dubious efficacy. The states with effective laws were Maharashtra, Delhi and Karnataka, and to some extent Rajasthan. However, even in these states, much was missing from the transparency laws and implementation was by and large poor. The other states with transparency laws of one form or another were Assam, Goa, Andhra Pradesh and Madhya Pradesh.

1.1.2 Towards a national RTI legislation

From the early 1990s, the *Mazdoor Kisan Shakti Sangathan* (MKSS) had started a grassroots movement in the villages of Rajasthan, demanding access to government information on behalf of the wage workers and small farmers who were often deprived of their rightful wages or their just benefits under government schemes. The MKSS transformed what was till then mainly an urban idea pushed by a few activists and academics, into a mass movement that quickly spread not only across the state of Rajasthan but also to other parts of the country. It was mainly as a result of this rapid spread of the demand for transparency that the need to have a national body, that coordinated and oversaw the formulation of a national RTI legislation, began to be felt.

In August, 1996, a meeting was convened at the Gandhi Peace Foundation in New Delhi where the National Campaign for People's Right to Information (NCPRI) was formed. It had, among its founding members, activists, journalists, lawyers, retired civil servants and academics.⁵ One of the first tasks that the NCPRI addressed itself to was to draft a right to information law that could form the basis of the proposed national act.

The NCPRI and the Press Council of India formulated the initial draft, under the guidance of Justice P.B. Sawant, retired judge of the Supreme Court of India and Chairman of the Council. This draft was discussed at a meeting, in 1996, attended by many concerned people, including representatives of the major political parties. The draft was then presented to the Government of India which set up another committee. This committee came up with a somewhat watered down version of the act in 1997. This draft was further amended and introduced in Parliament, in 2000, as the Freedom of Information Bill.

Soon after, the Freedom of Information Bill was introduced in Parliament, in 2000, it was referred to a select committee of Parliament, which invited comments from the public. In the National Democratic Alliance (NDA) regime, the Bill was passed by Parliament, with almost no amendments or changes, in December 2002. The process took nearly six years from the submission of the NCPRI/Press Council

⁵ The founding members of the NCPRI were *journalists* Ajit Bhattacharjea, Prabhash Joshi, and Bharat Dogra; *advocate* Prashant Bhushan; *retired civil servants* S.R Sankaran and Harsh Mander; *social activists* Nikhil Dey, K.G. Kannabiran, Renuka Mishra, M.P. Parmeswaram, and Aruna Roy; and *academic* Shekhar Singh.

draft bill in 1996. Also, it is possible that the passing of the Bill was finally because of prodding by the Supreme Court of India.

Essentially, the five indicators of a strong transparency law can be seen to be *minimum exclusions, mandatory and reasonable timelines, independent appeals, stringent penalties* and *universal accessibility*. The 2002 Act failed on most of these counts. It excluded a large number of intelligence and security agencies from the ambit of the Act, it had no mechanism for independent appeals and prescribed no penalties for violation of the Act.

Interestingly, till the elections and the advent of a new government, in May 2004, even this weak Act had not been notified and made operative.

Soon after the United Progressive Alliance (UPA) government, came to power in 2004, they created the National Advisory Council (NAC) which had, as members, many who had either been central to the RTI movement or were sympathetic to its demands. Also, 'strengthening the RTI Act' was an explicit undertaking in the Common Minimum Programme that the UPA government adopted, and the NAC was specifically mandated to monitor its implementation. All this led to the NAC recommending to the Government of India the enactment of an RTI Bill that had been drafted by civil society groups and adopted by the NAC. This was in August 2004, just three months after the UPA had come to power.

The passage of the Bill was not smooth and there were many ups and downs, but finally in May 2005 the Indian Parliament passed the RTI Act, which got the assent of the President of India in June 2005.

1.2 Background to the People's assessment of the RTI regime in India

1.2.1 The first assessment

The Indian Right to Information (RTI) Act came into effect on 12/13 October 2005. But soon after, there was speculation about the functioning of the Act and its effectiveness. All sorts of rumours started circulating and, based on anecdotal information, some people started questioning the usefulness of the Act. Others declared that only urban, educated, well-to-do people were using it, or that mostly government servants were using it to access information about their own postings and promotions.

There were also rumours about the misuse of the Act, for harassing or blackmailing officials. Unfortunately, no objective data existed. When challenged, these rumours turned out to be generalisations from a few isolated cases, or unsubstantiated general impressions.

At the same time there were numerous stories about the use of RTI by poor people, both in the villages and in urban areas. Newspapers often carried inspirational stories about poor, illiterate people using the RTI Act to get their basic rights. There were stories about large-scale scams and big-time corruption being exposed through the use of the RTI Act. But these were also based on anecdotes, with little or no reliable data to determine whether these anecdotes were representative of the larger reality relating to the efficacy of the RTI Act. Therefore, there was a growing recognition among many of the stakeholders that there was a need to objectively record and analyse the RTI experience across India.

Ordinarily the task of assessing the functioning of government laws and schemes is taken up by various departments and committees of the government, or by academic institutions which have been sponsored by the government to undertake this task. However, discussions among members of the National Campaign for People's Right to Information and in various other fora where RTI activists

gathered, seemed to throw up the need to establish a mechanism by which there can be an ongoing, or at least a periodic, 'people's assessment' of the functioning of the RTI regime in India.

It was also thought that an ongoing process of monitoring and assessment of the RTI Act and related activities would not only keep people's movements alert and aware of what was happening around the country, especially at the grassroots, but also be a means of putting pressure on the government, on information commissions, and on other stakeholders to work collectively at strengthening the Act and its implementation.

The debate about the need to monitor the functioning of the RTI Act acquired a greater sense of urgency in 2006, when a concerted effort was made by the Government of India to amend the RTI Act and make it weaker by, among other things, removing 'file notings' (essentially a record of the deliberative process in the government) from the purview of the RTI Act. Amendments were approved by the union cabinet and listed for introduction in Parliament. In response to this move, activist groups across the country mobilised and, with the support of the media and elements within various political parties, managed to block this amendment. The stand that people's organisations took was that it was too early to amend the Act and, in any case, if it was to be amended it needed to be strengthened rather than weakened.

Though the government was forced, in this instance, to refrain from introducing in Parliament the proposed amendments, it was clear that they had not abandoned the idea.

Given this background, when in early 2008 the Government of India declared its intention to launch an assessment of the implementation of the RTI Act, and soon after engaged a private firm⁶ to conduct this assessment, there was concern among many of the stakeholders. There was an understandable worry that such an assessment might be used to buttress the case for amending the RTI Act. Also, such an assessment seemed premature, considering the Act was then just a little over two years old and very few, if any, laws had been assessed so soon after their enactment.

It was thought that people's organisations should do their own assessment in a manner that is participatory and transparent, using a methodology that is scientific, so that the findings of the government-sponsored assessment could be compared with those of the People's Assessment. Therefore, in 2008 a group of RTI activists, researchers and academics got together to create a group dedicated to the ongoing assessment and advocacy of the RTI regime in India, and the Right to Information Assessment and Advocacy Group (RaaG)⁷ came into existence.⁸

The results of this assessment, covering the period October 2005 to March 2008, were made public in 2009 and widely disseminated and discussed.⁹

1.2.2 The second assessment

The fact that various elements in the government were again working towards amending the RTI Act became common knowledge in 2009. Accordingly, a group of activists wrote to the Prime Minister, in

⁶ PricewaterhouseCoopers

⁷ Initially known as the Right to information assessment and *analysis* group.

⁸ Those involved in the first study and therefore in the formation of RaaG included (in alphabetical order) Yamini Aiyer, Ankita Anand, Anjali Bhardwaj, Amrita Johri, Chandni Luthra, Malika Malhotra, Raman Mehta, Premila Nazareth, Suchi Pande, Salim Ahmed Qureshi, Prashant Sharma, Soham Sen, Misha Singh, Ruby Singh, Shekhar Singh, Bincy Thomas, Vishaish Uppal. The first study was done in collaboration with the National Campaign for People's Right to Information (NCPRI). Google.org substantially supported this study by providing a grant to one of the co-directors of this assessment.

⁹ Executive summary available at <http://rti-assessment.com/>

October 2009 (copy of letter at annexure 1) and also met Mrs Sonia Gandhi, the then Chairperson of the National Advisory Council, to request her to discourage the government from amending the RTI Act. Mrs Gandhi subsequently wrote to the Prime Minister, in November 2009, requesting him to reconsider any move to amend the RTI Act. She mentioned the study done by the government and the one done by the NGOs as a basis for her assessment (copy of letter at annexure 2). There was a response from the Prime Minister that seemed non-committal (copy of letter at annexure 3).

As anticipated, a second attempt was made by the Government of India in 2010, to amend the RTI Act, and essentially to weaken it. On 26th August, 2010, the Press Bureau of India issued the following press note:

“Proposal for amendment of RTI Act is under consideration in the Ministry of Personnel, Public Grievances & Pensions. The proposal under consideration includes, inter-alia, amendment to enlarge the scope of suo-motu disclosure, to discourage frivolous or vexatious representations, to modify the provision about disclosure of cabinet papers, to safeguard the sensitivity of the office of the Chief Justice of India, to provide for constitution of Benches of the Commission and to incorporate a new section empowering the Commission to make regulations. Amendments, if any, will be made after consultation with stakeholders.

*This was stated by the Minister of State in the Ministry of Personnel, Public Grievances & Pensions, Shri Prithviraj Chavan in written reply to a question in Rajya Sabha today.”*¹⁰

However, this unleashed huge protests from many quarters, and not only people’s movements and NGOs, but even much of the media, strongly criticised this proposed move by the government. Many of the political parties in the opposition and members of some within the UPA or supportive of it, were also against such amendments. Fortunately, this move was unsuccessful and the government had to back down and give up, at least temporarily, the idea of amending the RTI Act.

Political parties and the RTI

In 2013 the Central Information Commission gave a landmark order¹¹ stipulating that some of the national political parties (like the Congress, the BJP, the CPM and the CPI) were public authorities and came under the purview of the RTI Act. For once, all the political parties united against this order and decided to amend the RTI Act to explicitly remove political parties from under the jurisdiction of the RTI Act. Once again, NGOs and people’s movements got active and, with the support of the media, huge pressure was brought upon the various political parties. Unlike the last two times, this time a bill was drafted and introduced in Parliament. For a while it seemed that the Act would get amended, as all the political parties seemed to be in support. However, perhaps as a result of the hectic advocacy by various stake holders, this bill lapsed when Parliament was dissolved and the third, perhaps most resolute, attempt to amend and weaken the RTI Act had also been defeated. For how long, no one knows!¹²

¹⁰ <http://pib.nic.in/newsite/erelease.aspx?relid=65307> accessed on 21 August 2014.

¹¹ www.rti.india.gov.in/cic.../CIC_SM_C_2011_000838_M_111223.pdf

¹² See *Let’s All Come To The Party*, by Anjali Bhardwaj, Amrita Johri, Shekhar Singh. OUTLOOK, Sep 23, 2013 <http://www.outlookindia.com/article/Lets-All-Come-To-The-Party/287768>

Open political parties to public scrutiny, Amrita Joshi, Anjali Bhardwaj & Shekhar Singh, Times of India, Jul 12, 2013 <http://timesofindia.indiatimes.com/edit-page/Open-political-parties-to-public-scrutiny/articleshow/21025161.cms>

Criticism by Prime Ministers

Despite the widespread support that the RTI Act evoked, the government continued its efforts to denigrate it and no less a person than the then Prime Minister of India, Manmohan Singh, was publicly critical of it on more than one occasion. He spoke out against it not only at the annual convention of the Central Information Commission in 2012, but at least on two earlier such conventions, in 2011 and 2008, where he expressed similar misgivings (relevant extracts of the PM's speeches given below).

*"Even as we recognize and celebrate the efficacy and the effectiveness of the Right to Information Act, we must take a critical look at it. There are concerns that need to be discussed and addressed honestly. I had mentioned last time the need to strike a balance between the need for disclosure of information and the limited time and resources available with the public authorities. A situation in which a public authority is flooded with requests for information having no bearing on public interest is something not desirable. We must, therefore, pool all our wisdom, our knowledge, and our experience to come to a conclusion on how to deal with vexatious demands for information, without at the same time hindering the flow of information to those whose demands genuinely serve public interest. Another concern that has been raised is that the Right to Information could end up discouraging honest, well meaning public servants from giving full expression to their views. I think we need to remember here that a point of view brought under public scrutiny and discussion in an isolated manner may sometimes present a distorted or incomplete picture of what really happened in the processes of making the final decisions. The Right to Information should not adversely affect the deliberative processes in the government. We must also take a critical look at the exemption clauses in the Right to Information Act to determine whether they serve the larger good and whether a change is needed in them. I am happy that there is a special focus in your conference on the exemption clauses of the Act and I would urge all of you to come up with concrete suggestions in this area. There are also issues of privacy. The Act does have provisions to deal with privacy issues but there are certain grey areas that require further debate."*¹³

*"I must also take this opportunity to caution that we need to strike a balance between the need for disclosure of information and the limited time and resources available with the public authorities. Also, vexatious demands should not be allowed to deprive genuine information seekers of their legitimate claims on limited public resources. I do hope your Convention will bring out certain suggestions to deal with this situation."*¹⁴

Unfortunately, it was not just the former Prime Minister but also the current one who seemed to have misgivings about the RTI Act. One of Narendra Modi's speeches, while campaigning for the 2014 national elections, was reported in the national media as follows:¹⁵

"Seeking to pick holes in Rahul Gandhi's frequent talk about RTI, he said "has RTI given you something for your stomach to eat? The black money which has been stashed away, has it

¹³ Extract from the speech delivered by the Prime Minister of India, Dr. Manmohan Singh, at the 6th annual convention organised by the Central Information Commission, October 14 2011 - <http://cic.gov.in/>

¹⁴ Extract from the speech delivered by the Prime Minister of India, Dr. Manmohan Singh, at the 3rd annual convention organised by the Central Information Commission, November 3, 2008 - <http://cic.gov.in/>

¹⁵ <http://www.outlookindia.com/news/article/Modi-Tears-Into-UPA-Claims-on-MNREGA-RTI/836295>

come back? In 2G scam, where have crores of rupees been gobbled up - has that booty come back?

"Does anyone lock up coal ... This Delhi government loots coal People talk about looting of coal but he (Rahul) says please take RTI. They (Congress) make fun of poor people. They don't want to free the country from corruption. Shouldn't the black money be brought back to the country or not?" Modi said."

The rationale

Five years after the first assessment had been completed, there remained many hurdles to the proper functioning of the RTI regime¹⁶ and many wrong impressions about it. The time seemed right to do another assessment using a similar methodology and sample as the first assessment, so that comparative data could be generated and changes and progress in the regime could be assessed. Such a scientific study on the way in which the RTI Act was being used, would also help in ensuring that past, present, and future Prime Ministers have the opportunity of looking at scientifically collected data before forming their views on the RTI. Hence this study, which was initiated in October 2013, has been carried out jointly by RaaG and the Centre for Equity Studies (CES). This study has been supported by a grant from the United Nations Development Programme, India,¹⁷ and covers two years: 2011-12 and 2012-13.

1.3 Goal and objectives

The goal of this assessment is to ascertain how India's right to information regime might be further strengthened. The specific objectives of the assessment are:

1. To assess the use and implementation of the RTI Act in India, especially regarding:
 - a) Public awareness about the Act and its relevance and use;
 - b) Governmental and other efforts to promote such an awareness and facilitate public use of the Act;
 - c) The willingness and preparation of the government, and other public authorities,¹⁸ to promote access to information;
 - d) The challenges and constraints, if any, that the public faces in accessing information under this Act;
 - e) The challenges and constraints, if any, that the government and other public authorities face in promoting access to information under this Act;
 - f) Performance of the various public authorities in implementing the Act, especially in terms of voluntary (proactive) disclosure of information;

¹⁶ The term 'RTI regime' is used in this report to describe the formal and informal infrastructure and the related processes and stakeholders involved with the implementation and promotion of the RTI Act. These include the law and rules themselves, the public authorities that are the repositories of the information, the first appellate authorities, the information commissions, and the higher judiciary, who are the adjudicators, the public information officers (PIOs) who are the distributors of information, the people of India who are the applicants (and the right holders), and other stakeholders like the media, the NGOs and people's movements, and the researchers and academics.

¹⁷ The United Nations Development Programme, India, sanctioned an amount of ₹ 9,130,000.00 (₹ ninety one lakh thirty thousand) to the CES to fund this assessment.

¹⁸ The RTI Act defines all government departments, all organisations controlled by the government, and all organisations receiving substantial government support (directly or indirectly) as public authorities. Public authorities come directly under the purview of the RTI Act (see section 2(h) of the RTI Act).

- g) The role of the appellate authorities¹⁹ in ensuring timely access to information.
2. To assess the role played by various stakeholders in establishing and strengthening the RTI regime.
 3. To determine priority future action in order to make the RTI regime stronger in India.
 4. To develop a replicable assessment methodology and a sustainable process for participatory and transparent assessments.

1.4 Structure

This report presents a national level synthesis of the findings of primary and secondary research carried out for a sample of public authorities, PIOs, applicants and appellants at the level of the Central Government, five state governments, two district headquarters in each of these five states, and three villages in each of these districts (except in Delhi). It also presents state level and even PA level data, where they are relevant.

It also presents a synthesis of the findings related to various information commissions, and of street corner interviews conducted in various cities, and focus group discussions and public hearings held in villages and towns. The report also contains recommendations relevant at the national level.

As one purpose of this assessment was to develop a replicable methodology, Chapter 2 gives an overall description of the methodology, and a section in each of the chapters give details of the methodology used for, and the scope and coverage of, that chapter.

¹⁹ The RTI Act envisages two levels of appeals. The first is within the public authority from which information is being sought, to a functionary senior to the public information officer who is responsible for dealing with the original application. The second appeal, against the order of the first appellate, lies with an information commission, which is a statutory independent body set up under the RTI Act (see sections 15 to 20 of the RTI Act).

2. METHODOLOGY

Given below is a brief description of the methodology used for conducting this assessment. Further details of the methodology used for different elements of the study are given in each of the individual chapters.

2.1 Data Collection

2.1.1 Primary data collection through individual interviews

As a part of the People's RTI assessment 2011-13, a total of 2279²⁰ persons were individually interviewed across four states and the National Capital Region of Delhi. These include randomly selected citizens in the four state headquarters and in Delhi, applicants, appellants, information commissioners, and PIOs.²¹ In addition, officials and activists from various other countries, and representatives of international organizations working in these countries, were also individually interviewed to develop a comparative international understanding and identify lessons that India can learn from other countries.

2.1.2 Primary data collection through street corner interviews

2,000 people were individually interviewed in the capitals of the four sample states, and in Delhi. In each city, eight locations consisting of two each of government hospitals, universities, market places and malls were chosen to conduct street corner interviews (SCIs) and at each location 50 randomly selected people were interviewed (see table 2.1). The locations were chosen across different zones in the city to ensure that the interviewees were representative of different geographic areas of the state headquarters. In malls and

Table 2.1: Location of Street Corner Interviews	
City	Locations
Jaipur (Rajasthan)	Sawai Man Singh Hospital, Mahatma Gandhi Hospital, Chandpowl Market, Badi Chowpat Market, Gaurav Mall, Ghoomaan Mall, Rajasthan University & Subodh College
Hyderabad (Andhra Pradesh)	Gandhi Hospital, Osmania Hospital, General Bazaar Market, Koti Market, Prasad Mall, GVK Mall, Osmania University & Nizam College
Delhi	Safdurjung Hospital, GTB Nagar Hospital, Sarojini Nagar Market, Laxmi Nagar Market, Priya's Complex, Khan Market, Delhi University & Arts Faculty
Guwahati (Assam)	GMC Hospital, MMC Hospital, Guwahati University, Cotton College, Malegaon Market, Fancy Bazar, VM Mart & Big Bazar
Patna (Bihar)	Patna Medical College and Hospital, Indira Gandhi Institute of Medical Sciences, Hathuwa Market, Maurya Lok Complex, PM Mall, V2 Mall, Patna College & Bihar National College

universities, most of the respondents were from the middle or upper middle income groups whereas respondents from market places and government hospitals were mostly from the lower income strata. In some cities the survey teams were not allowed to interview people inside malls and therefore, high end shopping centres were chosen as replacement locations. To ensure that people were randomly

²⁰ Street corner - 2000, PIOs - 59, village RTI applicants - 12, Urban RTI applicants - 180, ICs - 14, Intl study - 14.

²¹ Each public authority is required to designate one or more of its existing staff as a public information officer (PIO) in each of its offices. The PIO receives the RTI application and has the responsibility of either providing you the asked for information or informing you that the information asked for is exempt under the RTI Act and therefore cannot be provided. A time limit is specified for the provision of information or for the response – and in most cases it is 30 days (see sections 5, 6 and 7 of the RTI Act).

chosen to be respondents for the SCIs, a density survey of the population was undertaken at each location after which a number gap was identified which was then used to randomly determine the respondents for the SCIs (for example- interviewing every 10th person).

In order to ensure gender parity across the respondents, survey teams were asked to ensure that as far as possible 50% of all respondents at each location were women. In total 49% respondents were female while the rest were male. To ensure representativeness of the sample in terms of the age of the respondents, the bias towards young persons (18 to 30 years) in universities, was balanced out in the SCIs conducted in malls. Of the 2000 respondents interviewed, 47% were young people (18 to 30 years), 39% middle aged (30 to 50 years) and the remaining 14% were above the age of 50 years.

The SCIs were designed to ascertain whether people valued the ability to access information from the government, whether they had ever felt the need to access information, the level of awareness about the RTI Act and whether people found the RTI relevant in any way, and if so, how.²²

2.1.3 Primary data collection through focus group discussions

In addition, a total of 95 focus group discussions (FGDs) were also organised. Of these, 74 were organised in the 24 sample villages in eight districts of the four sample states (Delhi was excluded). Focus group discussions were held with the entire village community, while additional focus group discussions were organised with special



FGD in a village in Rajasthan

groups, like with women, members of scheduled castes or scheduled tribes, etc., residing in each village. Similarly, 21 focus group discussions were organised in 20 municipal wards, two municipal wards per district in each of the 10 district headquarters in the five sample states. A total of 2867 people attended the FGDs: 2278 in rural areas and 589 at the district headquarters.

The FGDs were designed to ascertain whether the participating public considered access to information important and, if so, why²³. Also assessed was their familiarity with, and use of, the Right to Information Act. In rural areas, FGDs were also used to identify RTI applicants and appellants, who were subsequently interviewed for their experiences.

2.1.4 Primary data collection through public hearings

As part of the nationwide assessment on the implementation of the RTI Act, public hearings (PHs) were organized in the four sample states and in Delhi to document peoples' experience of using the RTI Act. The PHs were organized in collaboration with the state partners.

²² See SCI questionnaire at <http://www.rti-assessment.com/annexures.html>

²³ See FGD questionnaire at <http://www.rti-assessment.com/annexures.htm>

The public hearings were used as a qualitative tool to gain better insights into the implementation of the RTI Act. The aim of the PHs was to understand the experiences and perceptions of the users of the RTI Act and simultaneously discuss the many facets of the RTI regime in each state. Close to 500 people participated in the five PHs held in the four states and in Delhi. People from diverse backgrounds participated and the participants included students, farmers, young professionals, retired government officials, and activists who have been closely working with the RTI movement.



Public hearing in Rajasthan



Public hearing in Delhi

2.1.5 Primary data collection through inspections

Across the country, 69 public authorities and offices were inspected as a part of this assessment. The inspections were aimed at determining the ease with which an applicant could file an RTI application, availability of records that were to be displayed and made available pro-actively, under section 4 of the RTI Act, and the signs and other display of information, as required under the law²⁴.

2.1.6 Primary data collection through filing RTI applications

Specifically, 462 RTI applications were filed and followed up²⁵ with PIOs to get basic information from various public authorities across the country. Two applications were filed by post with each of the 70 public authorities (in district headquarters, state headquarters, and at the Central Government) asking for the number of RTI applications received and responded to, the number in which full and part information was provided, how many were disposed of in time, how many were late, and how many first appeals were allowed and rejected. Also asked for were copies of the application register, applications, and responses to the applications (copy of applications at annexure 4).

Also, seven RTI applications were filed with each of the 28 information commissions asking them to send statistics on how many appeals and complaints had been received, how many disposed of, how many pending; how many penalties had been imposed, how much compensation had been awarded,

²⁴ See schedules for 'PA premises inspection' at <http://www.rti-assessment.com/annexures.html>

²⁵ Some of the applications filed were forwarded by the original PIO to two or more PIOs. Consequently, what started as 140 applications became 462 as the study progressed.

and how many of the orders had been uploaded to the website (copies of the applications at annexure 5).

An RTI application was also filed with the RTI nodal department of each state and union territory, and of the Central Government (35 nodal departments in all), asking for copies of rules and circulars issued, and various other information relating to the RTI Act (copy of the applications at annexure 6).

These RTI applications also generated meta-data, for not only was the information that was procured through these applications used in the assessment, even the manner in which these applications were themselves handled became an input into the assessment. The progress of these applications was monitored and an interesting analysis emerged on how long it takes for different public authorities to respond, how many of them respond at all, how many refuse information, what reasons they give for the refusal, and how effective is the appellate mechanism.

2.2 Data Analysis

2.2.1 Analysis of replies received to RTI applications

Copies of 2743 RTI applications were received from four states, the union territory of Delhi, and the Central Government, in response to the earlier mentioned RTI applications filed with various public authorities. Despite best efforts, only 70 applications were received from Bihar, and those too very late and from only two PAs. As such the aggregate data of the analysis of RTI applications excludes the state of Bihar. The Bihar figures are listed separately in the relevant tables.

As a stratified random sample, 987 of these applications have been analysed and reveal interesting details about the types of information being asked for, and some information about the people filing RTI applications. Most of these were in Hindi and English but some were in other Indian languages, many from Andhra Pradesh being in Telugu, and some from Assam being in Assamese. These were translated before being analysed.

Additionally, data regarding the disposal of nearly 85,000 applications was also received from public authorities in the three states of Assam, Andhra Pradesh and Rajasthan, the UT of Delhi, and the Central Government, in response to RTI applications filed. Bihar, again, sent sparse data very late, and therefore was not included in the aggregation.

This data has been used to analyse how often applicants get the requested information, how much of it, and in how much time. The findings are presented in Chapter 6 of this report.

Data was received from 24 of the 28 information commissions regarding the numbers of appeals and complaints received, the disposal rate and other relevant information. The required information for two of the commissions which did not respond was found on the web. This has been used for assessing the functioning of information commissions.

2.2.2 Analysis of published material

Relevant papers, articles, studies and assessments on India and about other countries were identified and assessed for possible inputs into the design of methodology and process for this assessment. These have also been used to develop national and international contexts in which the findings of this assessment can be located.

2.2.3 Analysis of the official websites of all ICs

An analysis of the official websites of all ICs was undertaken with a view to ascertain whether the websites provide relevant and updated information on the functioning of the ICs, including number of commissioners in each commission, orders passed by the commissions, and their annual reports.

2.2.4 Analysis of the official websites of PAs

To check compliance with provisions of proactive disclosures, the websites of 30 public authorities were analysed. Website analysis was undertaken for the four PAs chosen for the four sample states and also the 10 sample Central Government PAs. As each PA had only one official website, and there were no separate websites of the departments at the district level, no website audit of the PAs at the district level could be undertaken.

2.3 Stakeholders

Specifically, the People's RTI Assessment 2011-13 sought to survey and otherwise access information from the following key RTI stakeholders:

2.3.1 Citizens

To understand and assess whether citizens consider access to information (independent of the RTI Act) an important right in itself, and also as being important for resolving some of their problems. Further, to assess their level of awareness regarding the RTI Act and to capture their perception of the Act, especially in terms of its value and their experience in trying to use it.

2.3.2 Applicants and appellants

To assess the ease of accessing information by using the RTI Act and to capture their perceptions on the constraints and challenges faced in accessing information. Also, to gather their views on the effectiveness of the Act and on the infrastructure available to facilitate the use of the Act.

2.3.3 Public Information Officers

To capture the views of officials regarding the RTI. The objective was to understand and assess constraints and challenges faced by government officials and other PIOs in responding to the RTI and facilitating the effective implementation of the Act²⁶.

2.3.4 Public Authorities

To understand and assess whether public authorities have set up the required processes and infrastructure to service RTI requests. To also determine whether their functioning, especially methods of record keeping, have been influenced by the RTI. Also, to determine whether they have begun to 'pro-actively' report the detailed operational, financial, and service-related information the Act requires them to.²⁷ The objective was to study the extent to which public authorities had adapted their infrastructure to comply with the RTI.

²⁶ See PIO questionnaire at <http://www.rti-assessment.com/annexures.html>

²⁷ See section 4 of the RTI Act.

2.3.5 Information commissions

To understand their composition and structure, the processes they follow, the resources and facilities provided to them, their independence from the government, their functioning and their effectiveness and efficiency.

2.3.6 Information Commissioners

14 information commissioners, from the CIC and the various SICs, were interviewed regarding various aspects of their commissions and their functioning, and asked to give their views and suggestions on the key challenges faced by the commissions in servicing the Act²⁸.

2.4 Scope and Sampling

2.4.1 States

The assessment covered four states across the country, and the National Capital Region of Delhi. In each state, the state capital and two districts were surveyed. In each district, three villages were surveyed.

The states/UT³⁰ and their sample districts are listed in Table 2.2. In addition, ten public authorities from the Government of India were also a part of the sample (table 2.3 & table 2.4).

Table 2.2: Districts (Dist.) and villages in each state				
State	District 1	Villages in District 1	District 2	Villages in District 2
Andhra Pradesh	Visakhapatnam	Chinapachila, Kothamallempeta, Venkannapalem	Anantapur	Bodiganidoddi, Seshadribhatra Halli, Thammadehalli
Assam ²⁹	Jorhat	Uttar Borbill, Umru, Daibar Terang	Nalbari	Billeswar, Pubkalakuchi, Balizar
Bihar	Gopalganj	Magahia, Kararia, Rewtith	Purnea	Bisrupa, Baigna, Aulai
Rajasthan	Dungarpur	Pindawal, Kherwara, Jogpur	Karauli	Chandeela, Mahmampur, Kachroda
Delhi	North West	X	East	X

Box 2.1: How sample States, Districts and Villages were chosen

States – Three states (Andhra Pradesh, Assam and Rajasthan) and the UT of Delhi were deliberately chosen to overlap with the sample of states covered in the *People's RTI Assessment* of 2008-09. In this way, both sets of data can be compared to provide an idea of changes, if any, over five years of implementation of the RTI Act. Bihar was chosen as representative of the Eastern states.

Districts – Districts had been stratified for the 2008-09 assessment on the basis of literacy, SC and ST population, and geographical spread within the state, and then randomly sampled. For Bihar, a similar stratification was done using 2011 Census data, and two districts identified as representative. In the states that were also surveyed the last time, two of the three districts surveyed last time were again surveyed this time, to make the data comparable over time.

Villages – Within the districts, three blocks were selected such that they were not bunched together and were geographically dispersed. On the basis of the latest census data available, a list of all the villages in the selected block was generated, out of which three villages in each district were randomly picked.

²⁸ See IC questionnaire at <http://www.rti-assessment.com/annexures.html>

²⁹ Initially Karbi Anglong was chosen as the sample district and RTI applications to seek information were filed to this district. However, due to frequent incidents of violence and civil unrest in the district, it was not feasible to undertake field research in the district. Therefore, a new sample was drawn up and Jorhat was selected as the sample district for undertaking the field surveys (Street Corner Interviews, FGDs, PA premises inspection and PIO interviews).

³⁰ India has 29 states, though there were only 28 when this study started, as Telengana had not been formed by then. It also has seven union territories, including the National Capital Region of Delhi, which are territories administered by the Central Government. Each state has its own legislature and its own information commission, and is divided into districts, which are administrative units. Each district is further sub-divided into sub-divisions, which are smaller administrative units. The number of districts and sub divisions vary from state to state.

Box 2.2: How State and Central Government ‘Public Authorities’ were chosen

The three common set of public authorities (Rural Development, Revenue Department and Police) were the same as those in the sample for the 2008-09 *People’s RTI Assessment* study. This was to facilitate comparison over time. However, in Delhi, as there is no Department of Rural Development, so we picked the Women & Child Welfare Department.

One separate PA was selected for each state, a departure from the methodology of the 2008-09 assessment, in order to add an additional perspective of a department having a high public interaction in the respective state. The PAs for each state with the rationale for picking them is listed below:

For Bihar and Andhra Pradesh, the Department of Women and Child Development (WCD) was shortlisted (the actual name of the department differs in each state but we have referred to them as WCD to avoid confusion. Essentially they are the state departments which are responsible for the ICDS), as these two states have high levels of child malnourishment. As per the figures of the Ministry of Women and Child Welfare, in Bihar 82% of children are malnourished, while in Andhra Pradesh 49% are malnourished. The WCD is the nodal agency for ensuring holistic development of women and children and is responsible for the implementation of the Integrated Child Development Services (ICDS) which provides a package of services comprising supplementary nutrition, immunization, health check-up and referral services for children.

In Delhi, 49.91% children are malnourished and therefore WCD was chosen to replace the Department of Rural Development. The Delhi Urban Shelter Improvement Board (DUSIB) which is the nodal agency responsible for administration and development of slums and JJ clusters was chosen as the separate PA for Delhi. As per government information, more than 50% of the population lives in slums, JJ clusters and unauthorised colonies.

For Assam, the Department of Health was chosen as the separate PA as the average life expectancy in Assam is amongst the lowest in the country, as per the *2011 Human Development Index Report* by United Nations Development Programme (UNDP) India.

For Rajasthan, the Public Health Engineering Dept. was chosen as it is responsible for providing drinking water in Rajasthan, which is a desert state.

Table 2.3: Sample of Public Authorities

States/UT wise list of public authorities in sample				
State	Public authority 1	Public authority 2	Public authority 3	Public authority 4
Andhra Pradesh	Police	Revenue	Rural Development	Women & Child Development
Assam	Police	Revenue	Rural Development	Health
Bihar	Police	Revenue	Rural Development	Women & Child Development
Rajasthan	Police	Revenue	Rural Development	Public Health Engineering Dept.
Delhi	Police	Revenue	Women & Child Development	Delhi Urban Shelter Improvement Board

Table 2.4: Public authorities in the sample from the Central Government

1. Ministry of Rural Development	6. Ministry of Home Affairs
2. Ministry of Environment & Forests	7. Ministry of Social Justice
3. Ministry of Finance	8. Ministry of Communication & IT
4. Northern Railways	9. Ministry of External Affairs
5. Ministry of Culture	10. Ministry of Personnel & Grievances

2.4.2 Public Authorities

A total of 69 public authorities (PAs) were surveyed across the country, by visiting them. Of these, 10 were from the Central Government, and four each from each of three states and one UT, and three from Bihar (total 19 – as permission to survey Bihar HQ police was not granted). In addition, in four states and one UT, four PAs were surveyed in each of the two sample districts. This made it a total 40 PAs in ten district headquarters. The public authorities decided for the state governments were surveyed at the state headquarters and the district headquarters. The Central Government public authorities were only surveyed at their central headquarter based in Delhi.

2.4.3 Applicants

A total of 192 applicants were interviewed³¹ as a part of this assessment. Of these, 12 were from rural areas and the remaining 180 were from urban areas. The rural applicants were identified by the rural field teams during their visits to the sample villages, especially through the focus group discussions, and all the applicants identified, available and willing to talk to the team, were interviewed, irrespective of which PA they had applied to for information.

For urban areas, a stratified random sample was picked from the lists of applicants received from the sample PAs. These lists had been received in response to our RTI applications asking for them. As the research team found it almost impossible to contact and fix up a time for interview with RTI applicants whose phone numbers were not listed, finally the sample included mostly those who had listed their phone numbers. Though this might have caused some distortion in the sample, it was unlikely that this was significant as a very high proportion of people in urban areas now have phones – one estimate suggests 70% (www.telecomwatch.in/mailecodebnrs/13-09-09-mob.pptx). And as multiple members of a family use the phone, perhaps the coverage in terms of proportion of population is even higher. Also, a scrutiny of the other indicators suggests that many of the applicants who did not mention phone numbers were not necessarily from the poorer segment of society.



Interviews in Assam

³¹ See 'RTI applicant questionnaire' at <http://www.rti-assessment.com/annexures.html>

3. VALUING THE RIGHT TO INFORMATION

- ***77% of the people interviewed through street corner surveys thought that access to government held information could be helpful in various ways.***
- ***58% felt that access to government held information was helpful in solving individual problems.***
- ***83% of those who had heard of the RTI Act, in the state headquarters and in Delhi, stated that the RTI Act was relevant for them.***
- ***80% of respondents in rural FGDs, and 95% in urban FGDs, said that they would like to use the RTI Act to redress grievances.***

3.1 Introduction

Do the people of India believe that access to information can actually be helpful? And if so, in what ways? These were some of the general questions that this study sought to ask and answer. These questions are important for at least three reasons.

First, though the right to information is recognized in India as a fundamental human right, the enacting of a facilitating law, and the resources for its implementation, are best justified when there is a felt need among the people of India to access information.

Second, experience from other countries suggests that without widespread recognition of the value and utility of accessing information, and the consequent resolve to exercise the right to information, an RTI law would be little used.

Third, and perhaps most important: without a large constituency of those who value the RTI, it would be impossible to safeguard this right. Already the government has made three concerted efforts at diluting the RTI Act. The fact that they have been unsuccessful is largely due to the efforts of the large and rapidly growing number of Indians who have learnt to value the RTI and are therefore willing to fight for it.

3.2 Methodology

Keeping all this in mind, information was collected not just on peoples' familiarity with, or use of, the RTI Act (discussed in chapter 4) but also on whether access to information (independent of the Act) was seen by them as important for addressing the problems they or the society faced. Information was also collected on how many people find the RTI Act relevant and for what purposes.

3.2.1 Street Corner Interviews

2,000 people were randomly surveyed through street corner interviews (SCIs), in the capitals of the four sample states and in Delhi³². The SCIs covered respondents in Guwahati (Assam), Patna (Bihar), Hyderabad (AP), Jaipur (Rajasthan) and Delhi, and were held across different locations in each city including government hospitals, universities, market places, and malls.

In the SCIs, respondents were asked among other things whether being able to access government held information can be helpful in any way, and if so, how.³³ People were also asked if they had ever felt the need to access information from the government. Further, those that claimed to have heard

³² For details of the sample see the chapter on methodology (Chapter 2).

³³ See B4 and B5 of the SCI questionnaire at <http://www.rti-assessment.com/annexures.html>

of the RTI Act, were asked if they thought it was relevant for them, and if so, how (questions B7 and B8).

3.2.2 Focus Group Discussions

A total of 2867 people participated in the 95 focus group discussions (FGDs) organized in the sample villages³⁴ and district headquarters. 74 FGDs were organised in the 24 sample villages and 21 FGDs were organised in district headquarters in the five sample states. Low income settlements, mostly slum settlements, were chosen as the location for the urban FGDs. 2278 people in rural areas and 589 people in the district headquarters participated in the FGDs.

In the FGDs, after determining how many people were aware of the RTI Act, participants were given a brief explanation of the RTI Act.³⁵ They were then asked if they would like to use the RTI Act and if yes, for what? ³⁶ Additionally, participants were also asked to identify the five most important problems facing their village/ward, in an effort to discuss whether access to information was relevant to these priority issues.

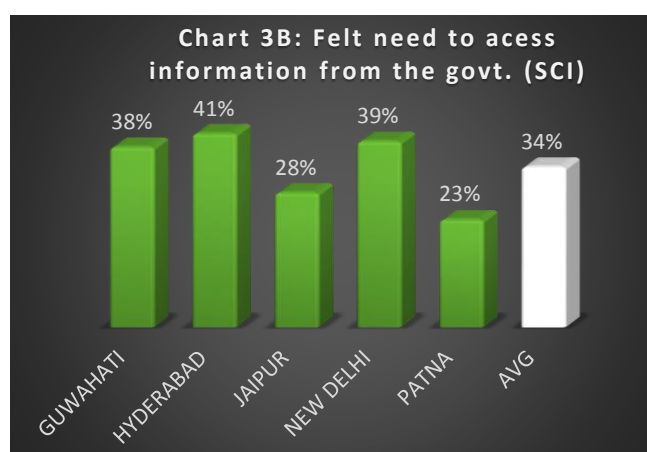
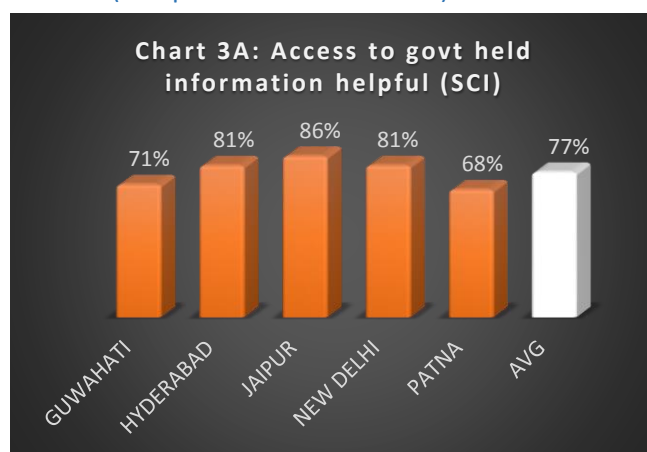
3.3 Findings

3.3.1 How many people recognize the importance of RTI (independent of the RTI Act)?

On average, 77% of the people interviewed individually at street corners, thought that the ability to access government held information could be helpful in one way or another (see Chart 3A).

Interestingly, though there was some variation (up to 18%) in the overall percentage between the capitals (see Chart 3A), an overwhelming majority thought that access to information could be helpful. Residents of Jaipur (Rajasthan) recorded the maximum value - 86% - for accessing government held information, closely followed by Delhi and Hyderabad (Andhra Pradesh), 81% each. Residents of Patna (Bihar) and Guwahati (Assam) seemed to have the least value for access to information – 68% and 71% respectively.

34% of the respondents in SCIs said that they had felt the need to access information from the government/ public authority. In Patna,



³⁴ For details of the sample see the chapter on methodology (Chapter 2).

³⁵ Explanation provided about the RTI Act in the FGD: "The RTI Act gives citizens the right to access information from the government. Under the Act, you can access information from the central, state and local governments, including the panchayat. Using the RTI Act, you can demand copies of documents/records, inspect works/documents or records, take certified samples of material and obtain information held in electronic form by the government."

³⁶ See H1, H12 and H13 of FGD questionnaire at: <http://www.rti-assessment.com/annexures.html>

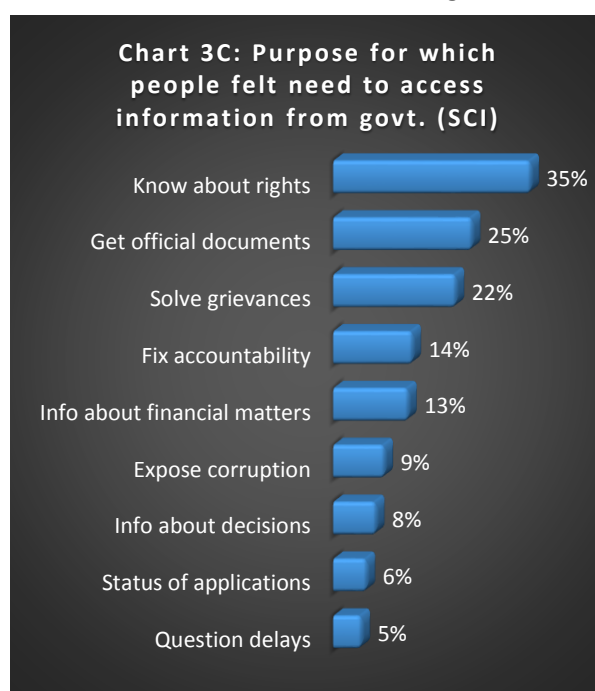
the least percentage of respondents, only 23%, stated that they felt the need to get information from the government, while the highest was in Hyderabad, at 41% (see Chart 3B).

3.3.2 Why do they think access to information is of value?

In the SCIs, 58% felt that access to information held by the government was helpful as it could help in solving individual problems (see Table 3.1). 24% thought that it would help prevent corruption, minimize bad governance and improve government efficiency while 26% thought it would contribute to solving community and national problems (total over 100%, as respondents could choose multiple options). In Hyderabad, Delhi, and Jaipur, 36%, 31% and 20% respectively, felt that access to information could help tackle corruption and improve governance.

35% of those who had felt the need to access information from the government, said that the purpose of accessing information was to find out about their rights vis-à-vis the government (Chart 3C). 25% felt the need to get information to get official documents/certificates while 22% to solve grievances. 14% said the purpose of accessing information was to fix accountability and 9% said it was to expose corruption (total over 100%, as respondents could choose multiple options).

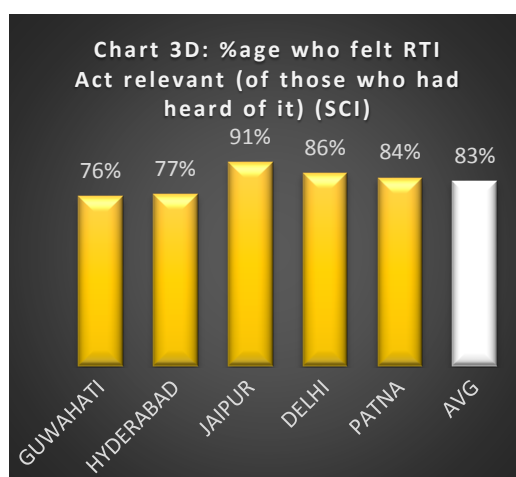
	Solving individual problems	Solving community & national problems	Tackling corruption, improving efficiency
GUWAHATI	66%	37%	10%
HYDERABAD	51%	34%	36%
JAIPUR	60%	13%	20%
NEW DELHI	58%	24%	31%
PATNA	54%	25%	17%
AVG	58%	26%	24%



3.3.3 How many people find the RTI Act relevant and for what?

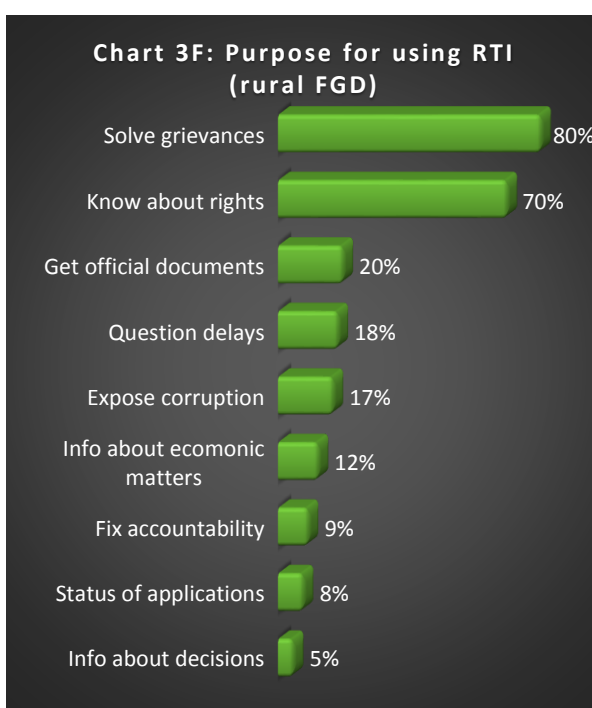
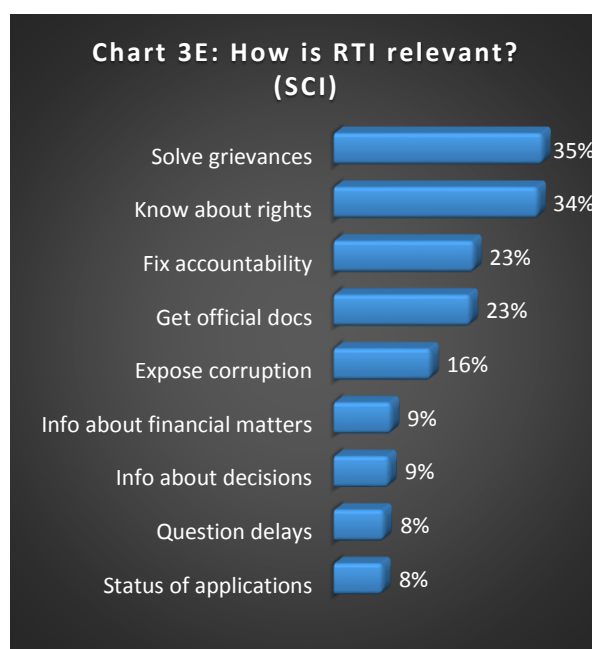
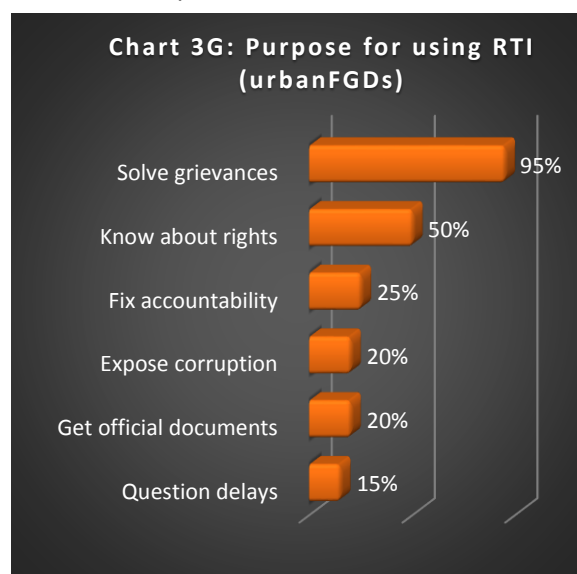
In capital cities, 83% of those who had heard of the RTI Act, stated that the Act was relevant for them. 91% in Jaipur and 86% in Delhi said that the RTI Act was relevant for them (see Chart 3D). In Hyderabad 77% found the RTI Act relevant, followed by Guwahati at 76%.

When asked, in the SCI, how it was relevant, the maximum percentage, 35%, felt that the RTI Act was relevant for solving grievances. This was closely followed by 34% saying that the RTI Act was relevant for accessing information about rights. At 23%, fixing accountability and accessing official documents were the next most cited reasons for the relevance of the RTI Act, followed



by 16% saying it was important for exposing corruption (see Chart 3E). As people could pick multiple options, the sum of percentages is over 100.

As part of the FGDs, after determining how many people were aware of the RTI Act, participants were given a brief explanation of the RTI Act. Following this they were asked if they would like to use the RTI Act and if yes, for what? In **rural** FGDs, 89% stated that they would like to use the RTI Act. 80% stated that they would like to use it to solve grievances, and 70% to find out information about rights. 35% said that the purpose for using the RTI Act would be to question delays and expose corruption (see Chart 3F). In **urban** FGDs, 95% people stated that they would like to use the RTI Act to solve grievances, followed by 50% who wanted to use it to know about their rights (Chart 3G). 55% wanted to use the RTI Act to fix accountability (25%) and expose corruption (20%). Total over 100% as multiple choices were allowed.



Given that in both rural and urban FGDs, people wanted to overwhelmingly use the RTI Act to solve grievances, Table 3.2 lists the three most important problems facing the village or ward as identified in the FGDs. In 47% of rural FGDs and 43% of the urban FGDs, unemployment was identified as the most important problem.

Table 3.2: Three most important problems faced by villages and urban wards	
Rural FGDs	Urban FGDs
Unemployment	Unemployment
Problems with supply/charges of electricity	Problems with supply/charges of electricity
Lack of/poor road connectivity	Problems with the ration shop/PDS & lack of/poor road connectivity

3.4 Discussion

Peoples' right to information and the legislation to enable this right (the RTI Act) are distinct of each other and should not be confused with each other. The Supreme Court, in various decisions, held that the right to information emanates from the right to free speech and expression, as enshrined in article 19(1)(a) of the Constitution, and is therefore a fundamental right of people (see chapter 1). A legislative framework was required to put in place the necessary mechanisms and machinery to enable people to realise this right. The Right to Information Act, 2005 provides a practical regime to enable people to exercise their fundamental right to information.

Findings show that an overwhelming majority of people, 77%, value the right to access information from the government, irrespective of their level of awareness of the specific legislation, and realise the significance of this right. People stated that access to information is important as it can be helpful in resolving their individual problems/grievances (58%), preventing corruption and improving government efficiency (24%) and helping solve community and national problems (26%).

The results indicate that people at large, in urban and rural areas, feel that the most crucial purpose for which they want to access information from the government, is in order to seek redress of their grievances. After being given a brief explanation of the RTI Act, in 95% urban FGDs and 80% rural FGDs, people stated that they would like to use the RTI Act to solve their grievances/problems. The key problems identified in rural and urban areas were- unemployment, problems with supply /charges of electricity, poor road connectivity and problems in accessing essential food grains under the public distribution system.

Evidently, a vast majority of people locate the right to information as central to their ability to negotiate their rights/entitlements with the government and hold it accountable for redressing their grievances. This is significant for the health of the RTI regime as people are then likely to be champions of the RTI Act and safeguard it from any dilution.

Clearly, the popular catchphrase often used to underscore the importance of transparency- 'information is power'- is well recognised and imbibed by people in India.

Perhaps one reason why so many people seek to redress grievances through the use of the RTI Act is because there is no time bound grievance redress framework in the country, consequently peoples' complaints about non-delivery of goods and services remain unaddressed. As the RTI Act is seen as a tool for holding governments accountable, it is naturally sought to be used to pressurise it for the services and entitlements it is supposed to deliver.

Of course, the challenge posed by this is that public authorities that are tasked with delivery of essential goods and services and consequently have extensive public dealing (like municipalities, land and building departments, police departments, etc.) receive a disproportionate share of RTI applications compared to other public authorities (see chapters 3 and 7). The findings, therefore, highlight the need for the government to urgently undertake two measures: put in place an effective mechanism to receive and redress peoples' grievances in every government office, and proactively provide information to people about the obligations of public authorities and the rights of citizens.

4. AWARENESS OF THE RTI ACT

- **61% of the respondents in the state headquarters (including Delhi) had heard about the RTI Act.**
- **In 62% of the urban FGDs and 64% of the village FGDs, no participant had heard of the RTI Act.**
- **In rural areas, newspapers were the most common source of information about the RTI Act, while in urban low income settlements, television was the most common source of information about the RTI Act. Overall, newspapers were the most common source of information about the RTI Act for both rural and urban RTI applicants.**

4.1 Background and Context

Perhaps the greatest challenge for RTI regimes in countries like India is to ensure that awareness about, and an understanding of, the RTI Act spreads quickly and widely among the people, especially the weaker segments and the rural populations. Along with awareness and understanding, there also has to be an appreciation of the relevance of the Act to their felt needs and perceived problems.

However, the disadvantages in India are many. Over a third of the country is illiterate, with nearly a thousand languages and dialects being spoken. Over a quarter of the country lives below the poverty line and in abject destitution: and it is these illiterate and destitute who most need the support of the RTI Act. The poor and marginalized living in slums in urban areas, are forced to live in circumstances wherein their very existence is termed 'illegal' as they are not the rightful owners of the land they are squatting on and therefore, are treated as though they have no right to demand services and entitlements from the government or question the government in any way. The marginalized in rural areas face their own set of deprivations and disenfranchising circumstances especially along caste-lines, which discourages a culture of questioning. Poor literacy rates, a constant fear of repercussion, retaliation, violence and even death, all discourage the use of the RTI Act by the urban and rural poor.

But the advantages and special opportunities are also many. There is a huge and growing viewership of television across the country, with viewership growing even among the weakest segments of society. There are a large number of vibrant NGOs and people's movements who have internalized the RTI and adopted it as their own. Further, as the Act has now been in force for nine years, there have been scores of examples of how individuals successfully used the Act to demand answers from the government in their struggle for their rights and entitlements, and these examples are often covered by the media – both print and electronic.

In recognition of both the critical need to disseminate awareness about the Act and the challenge that it poses, the RTI Act itself lays upon the government an obligation to “...advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act” (S. 26. (1)). Further, the Act requires every public authority to proactively provide information about “the particulars of facilities available to citizens for obtaining information...” and “(xvi) the names, designations and other particulars of the Public Information Officers;” (S. 4(1)(b)(xv) and (xvi)) and disseminate this information “widely and in such form and manner which is easily accessible to the public” (S. 4(3)) to make people aware about the channels of seeking information. These disclosures can be especially useful as this information has to be available at the offices of the public authorities, including *panchayats*, *mandals* and other such local bodies, in the form of publications, boards etc., in the local language. Therefore, if implemented properly, when people visit government offices to access their entitlements or to register complaints, the disclosures could potentially become an important way for them to become aware of the RTI Act and its processes.

4.2 Methodology

4.2.1 Street Corner Interviews

2,000 people were individually interviewed in the capitals of the four sample states, and in Delhi. Respondents in Guwahati (Assam), Jaipur (Rajasthan), Hyderabad (AP), Patna (Bihar) and Delhi were asked whether they had heard of the RTI Act.³⁷

4.2.2 Focus Group Discussions

A total of 2867 people participated in the 95 focus group discussions (FGDs) organized in the sample villages and the district headquarters. 74 FGDs were organised in the 24 sample villages in eight districts of the four sample states (Delhi was excluded) and 21 FGDs were organised in the 10 sample district headquarters of the five states being covered in the assessment.

In the village and district (urban) FGDs, people were asked whether anyone participating in the FGD knew about or had heard of the RTI Act. Where any of them stated that they knew about the RTI Act, they were then asked how they heard about it.³⁸

4.2.3 Interview of RTI Applicants

A total of 192 RTI applicants were individually interviewed as part of the assessment. 180 applicants were from among those who had filed RTIs with the sample public authorities in the five states and the Central Government and their names were randomly picked from among those provided by the public authorities under the RTI Act. The remaining 12 were found in the sample villages covered in the study.

RTI applicants who were interviewed as part of the assessment were asked about how they had heard of the RTI Act.³⁹

4.2.4 Inspection of premises of public authorities

Across the country, office premises of 69 public authorities were inspected, in the state capitals and the sample district headquarters of the five states and also the PAs of the Central Government (see chapter 7 for list of PAs inspected). The inspections were aimed at determining the availability of records that were to be displayed and made available pro-actively, under section 4 of the RTI Act, specifically those that could make people aware of the RTI Act such as the name of the public information officer, timings of submission of RTI applications, modes of payments of RTI fee, etc.⁴⁰

In addition, the websites of the public authorities were also analysed to check whether contact details of the PIO, details of RTI application fee and mode of payment and contact details of FAA were displayed. These details, if easily available, could create awareness about the RTI Act among those visiting the websites of PAs.

³⁷ See B6 of SCI questionnaire at <http://www.rti-assessment.com/annexures.html>

³⁸ H6 and H7 of FGD questionnaire at <http://www.rti-assessment.com/annexures.html>

³⁹ See D1 of RTI applicant questionnaire at <http://www.rti-assessment.com/annexures.html>

⁴⁰ See I2 and I4 of PA premises inspection at <http://www.rti-assessment.com/annexures.html>

4.3 Findings

4.3.1 How many people know about the RTI Act?

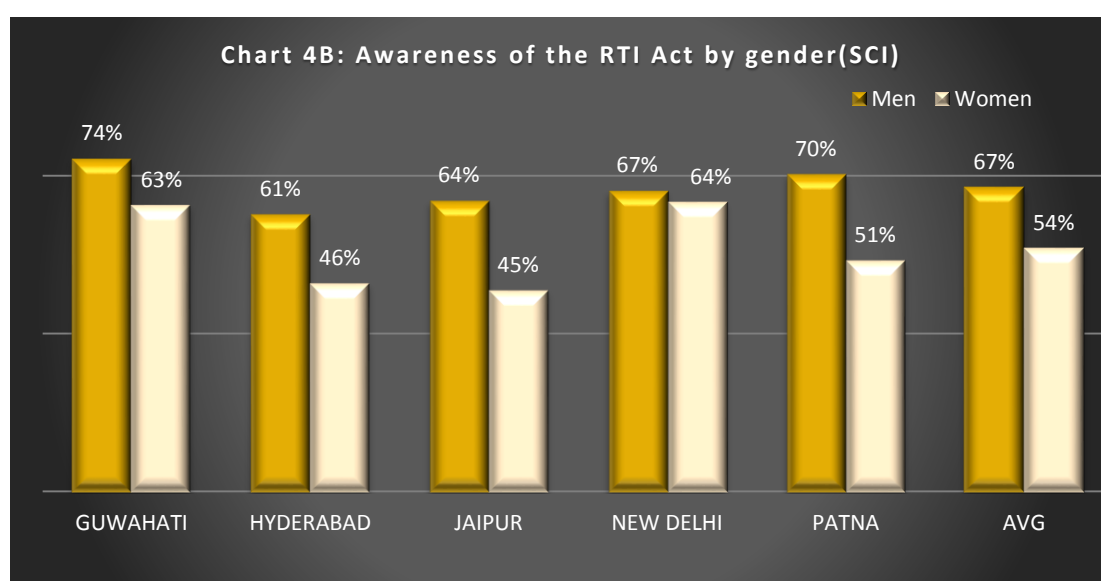
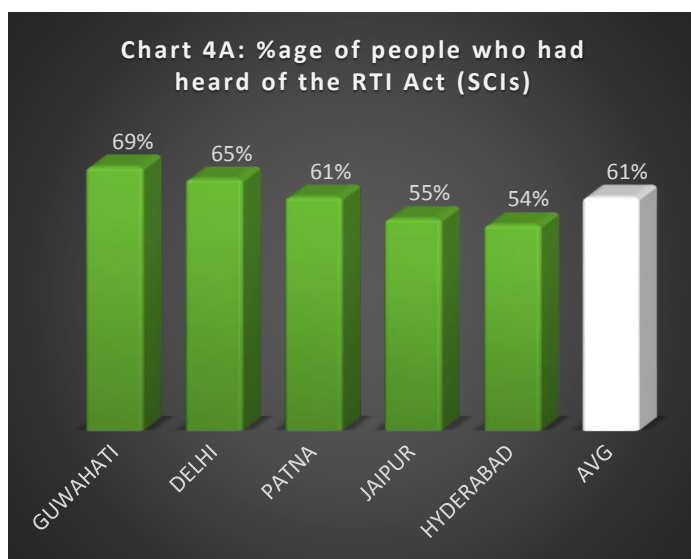
61% respondents to SCIs, had heard of the RTI Act (Chart 4A). 69% of the respondents in Guwahati (Assam) and 65% in Delhi had heard of the RTI Act, while Hyderabad (AP), had the lowest awareness with 54% stating that they heard of the RTI Act.

The results from the rural FGDs in terms of awareness about the RTI Act, were almost at par with the results of the urban FGDs held in low income settlements. In nearly 38% of the urban FGDs and 36% of the village FGDs, at least one or more person had heard about the RTI Act.

In 50% of the rural FGDs in AP and Assam and 35% in Rajasthan at least one person had heard of the RTI Act. The straggler was Bihar in this instance with only 11% FGDs having even one participant who had heard of the RTI Act.

4.3.2 Awareness by gender

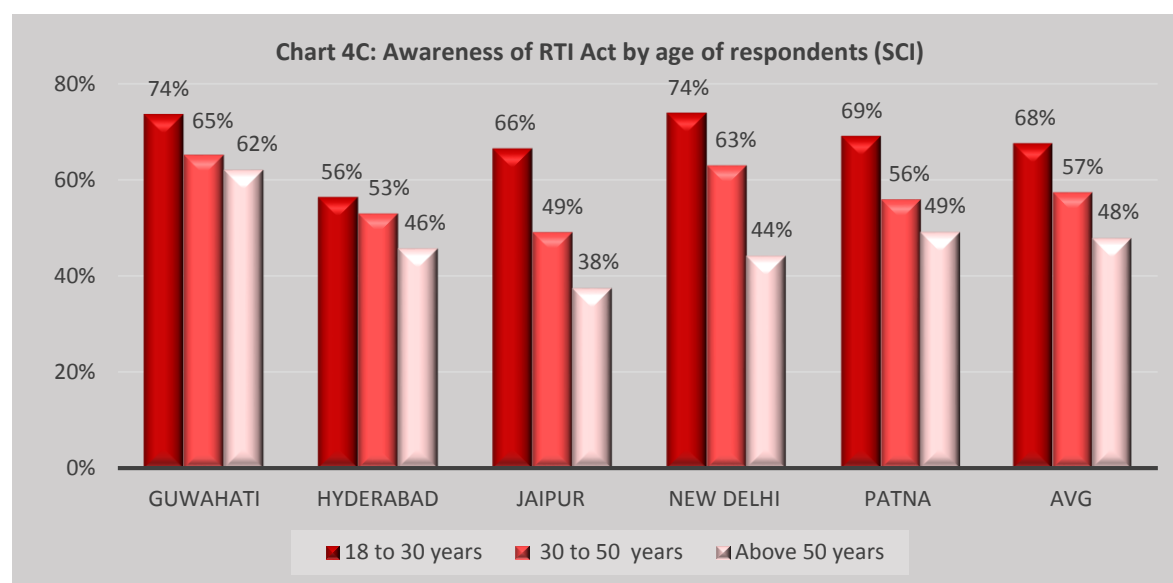
67% of the men and 54% of the women interviewed in the SCIs stated that they had heard of the RTI Act. The least disparity between men and women, in terms of awareness of the RTI Act, was witnessed in Delhi where 67% men and 64% women, who were interviewed, had heard of the RTI Act. Patna (Bihar) and Jaipur (Rajasthan) were the worst performers (see Chart 4B) with almost a 20% difference between men and women.



4.3.3 Awareness by age of respondents

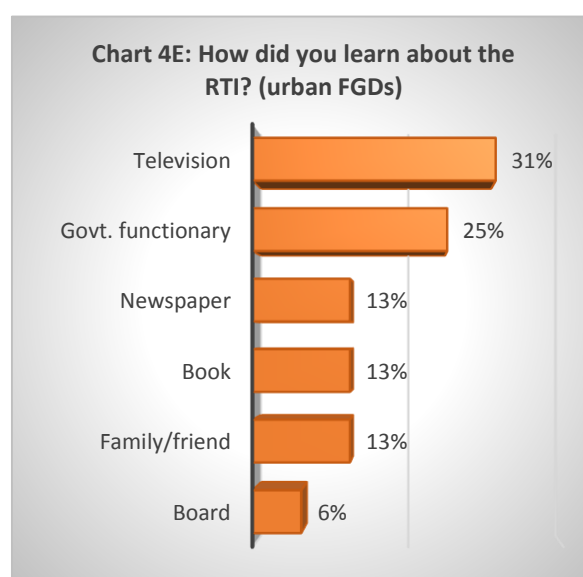
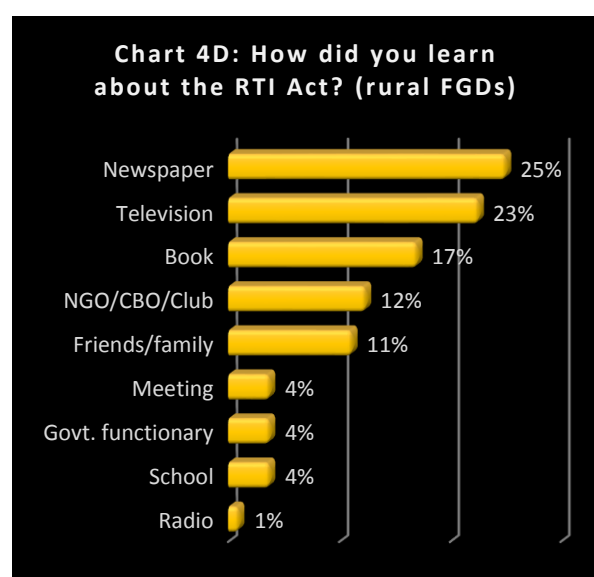
68% of young people (age group of 18 to 30 years), 57% of middle aged people (30 to 50 years) and 48% of people above the age of 50 years, interviewed in SCIs, stated that they had heard of the RTI Act. Across all five cities, the trend remained the same with young people being the most aware of the RTI Act, followed by middle aged people. In all the sample states, older people were the least aware of the Act.

The lowest awareness among young people was recorded in Hyderabad at 56% while in all other cities, more than 65% of the young people interviewed claimed to have heard of the RTI Act. The lowest awareness among older people (above the age of 50 years) was found in Jaipur and Delhi, 38% and 44% respectively.



4.3.4 How did people learn about the RTI Act?

In rural areas, participants of FGDs most commonly learnt about the RTI Act from newspapers (25%), followed by TV (23%). Books and NGOs were another important source of awareness about the RTI Act in rural areas (see Chart 4D). In only 1% of the FGDs, radio was identified as the source of

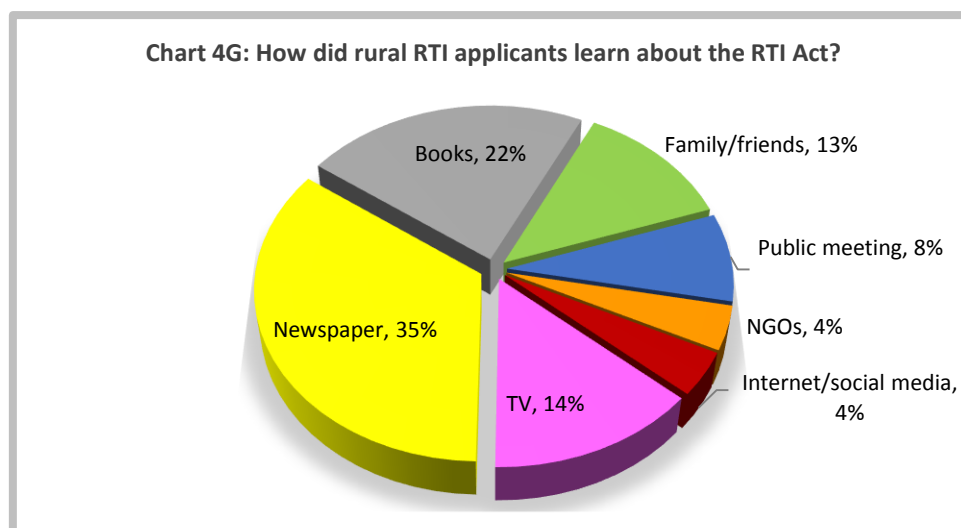
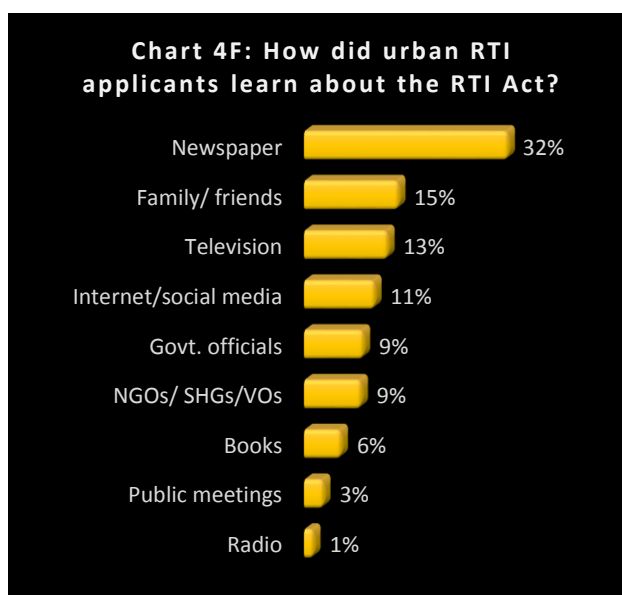


awareness about the Act. In urban FGDs, the leading source of information about the RTI Act was TV (31%), followed by government officials (25%) and newspapers (13%). See Chart 4E.

In at least one FGD, participants reported that they had learnt about the RTI Act through information displayed on boards at the *mandal* office. Not surprisingly, this was from an FGD held in AP, where our survey team found that 92% of the public authorities surveyed had put up the requisite board displaying the details of the RTI Act and the name of the PIO, mode of payment of RTI fee, etc. In Bihar, such boards could be found in only 9% of the surveyed public authority premises, while the national average was 35%.

32% of RTI applicants interviewed in urban areas said that they learnt about the RTI Act through newspapers. 15% said that they learnt about it through friends and family, and 13% through television (Chart 4F). People also cited the internet or social media, NGOs and government officials as the source of awareness about the RTI Act.

Among rural RTI applicants, newspapers were the leading source of information about the RTI Act (35%) followed by books at 22% and television (14%). 13% heard about the RTI Act through family or friends while still others had heard about the Act through NGOs, internet or through public meetings (Chart 4G).



4.4 Discussion

It is difficult to fully understand the implication of the figures relating to levels of awareness about the RTI Act, unless one can compare them to figures relating to levels of awareness about other laws in India. However, such figures about other laws are hard to come by.

In any case, the percolation of awareness to rural areas seems to be a heartening occurrence, given that the RTI Act is still a relatively new law, having been in force for 9 years at the time of the surveys in the rural areas.

Another, encouraging trend is that, of all the age-groups, young people seemed to be the most aware of the RTI Act. This bodes well for the future of the RTI regime in India as awareness is certainly the first step towards engaging with issues of transparency in government functioning and using the law to access information.

The surprise was the relatively poor showing of the electronic media versus the print media in rural areas, evidenced both in rural FGDs and interviews with rural RTI applicants. A worrying aspect of this would be that as the printed media is by and large accessible only to the literate, the illiterate and marginalized would be left out of the reach of this media.

Another unfortunate finding was that the government was not a major force in raising public awareness about the RTI Act. In all the states, barring AP, the government had not properly implemented even the most basic measure of putting up a board displaying details of the RTI Act and contact details of PIOs, in its offices. This critical failure could certainly be a leading cause of the low levels of awareness among people, especially the marginalized, about the RTI Act. Across the sample states, in 65% of the PA premises inspected, no board displaying details of the PIO, fee, timings etc. could be found (see chapter 7). The fact that in 69% of rural FGDs and 83% of urban FGDs, people reported visiting government offices while trying to seeking information to resolve the problems faced by their community, underscores the importance of using government offices as a space for creating awareness about the RTI Act. While PA's recorded a better performance in displaying details about the RTI Act on their website, with 90% proactively providing the name and contact details of the PIO, the reach of the internet as a source of awareness of the law is limited, especially in rural areas, as evidenced from our findings.

The one notable exception in this story of apathy by the government was that the only dedicated television program on the RTI Act is run by the government on its public service broadcast channel, *Doordarshan News*, which has a vast footprint, reaching about 50% of the country's population⁴¹. The weekly show titled '*Janane ka Haq*' ('Right to Know') covers stories of how people have used the RTI Act to access their rights and entitlements from public authorities, along with disseminating information on how to file requests for information under the RTI Act. The show includes an interactive session, wherein experts familiar with the RTI Act respond to queries and doubts of people who call in during the show.

Similar television shows, broadcast in local languages, could become an important avenue for creating awareness about the RTI law. The study clearly highlights the need for intensive and sustained measures to raise awareness about the RTI Act among people, especially the poor and disempowered, who are in fact the most dependent on the government for providing basic services and goods. Perhaps, case studies of how people have successfully used the RTI Act could be fictionalised for television broadcast to tap into the immense potential of the electronic media.

⁴¹ <http://ddinews.gov.in/About%20Us/Pages/About%20Us.aspx>

5. WHO USES THE RTI ACT, AND FOR WHAT

- *92% of the applicants across the sample states and governments were male, and 8% were female.*
- *14% of the applicants lived in rural areas, 58% in towns/cities, and 29% in metropolitan centres.*
- *If an estimated four million RTI applications were filed in India, in 2011-12,⁴² then this would suggest that over half a million of the applicants were from rural areas.*
- *96% of the RTI applications had a single signatory, 1% had two or more signatories, and 3% of the applications were on letterheads of some organisation or group.*
- *Only 5% of the RTI applications were from public servants seeking information about their service matters.*
- *A total of 67% of the information being asked for was such that it should either have already been made public pro-actively, under section 4, without being requested for (49%), or proactively supplied to the applicant without her having to file an RTI application (18%).*
- *The most commonly sought information related to decisions taken, action taken or proposed to be taken, norms prescribed by public authorities, basis of decisions, financial and public resources, schemes and programmes, and human resources.*
- *Most RTI applicants sought information in the form of a response to a query (73%) as opposed to copies of documents and records (47%), with 20% seeking both.*
- *7% of the 'applications' were technically not RTI applications but a complaint, a grievance or a cry for help.*
- *At least 16% of the applicants were seeking information that was aimed at getting action on a complaint, getting a response from a public authority, or getting redress for a grievance.*

5.1 Introduction

In the ultimate analysis, being aware of the RTI Act and valuing the RTI do not amount to much unless the people actually exercise their right to information by using the Act. It is also important that the right sorts of people, especially the poor and marginalised, use it for the right sorts of things, especially to ensure justice, human rights, and accountable governance.

Not long after the RTI Act became operative, rumours started spreading that the Act was being mainly used by disgruntled officials to sort out service issues like postings, transfers, promotions and even disciplinary action. There was also a belief that the RTI was mainly being used in urban areas, and that also by well to do and educated people. Mass mobilization of the poorest of the poor, around the RTI Act, was done by groups like the National Campaign for People's Right to Information (NCPRI), the *Mazdoor Kissan Shakti Sangathan* (MKSS), and the *Satark Nagrik Sangathan* (SNS). However, despite this, in the initial years, there was a belief among some that these were isolated happenings not representative of the national reality.

⁴² A recent study by the Commonwealth Human Rights Initiative titled *The Use of Right to Information Laws in India: A Rapid Study*, October 2013, New Delhi (http://www.humanrightsinitiative.org/postoftheday/2013/CHRI_RapidStudy-RTIUseinIndia-2011-2012-Oct13.pdf), accessed on 17 July 2014, determined that in ten sample states and the Central Government over 2 million RTI applications were filed in 2011-12. As their sample covered less than half the states in India, it would not be an overestimate to put the national total at four million RTI applications for 2011-12.

All this made it important to try and scientifically determine the profile of those filing the applications, what proportion of these were from rural areas, and what types of information was being sought.

5.2 Methodology

Unfortunately, it was not possible to use a common methodology to assess the number of applicants in both rural and urban areas. Whereas, in the sample villages it was possible to track down almost all, if not all, of the applicants and interview them, given that their number per village would be very small, this was not possible in the urban areas, especially in state headquarters and in Delhi, where the numbers were very large and it was difficult not only to identify the applicants, but even after identification, to interview them all. Therefore, different methods, as described later, were used to estimate the number of rural and urban applicants.

5.2.1 Estimating the rural-urban divide

The study-teams identified in each village the individuals who had filed one or more RTI applications. This was done during the various focus group discussions where the participants were asked whether they had ever filed an RTI application or knew of anyone else who had. The so identified applicants were enumerated and interviewed. As the villages in the sample were randomly selected, the number of applicants identified in the village sample could legitimately be used as a base figure for extrapolating the estimated total number of rural applicants. 24 randomly selected villages from eight districts in four states formed the rural sample.

Also, copies of RTI applications were accessed from sample public authorities in the sample districts and state headquarters (see Chapter 2 on methodology, for list), and a sample of 987 RTI applications were analysed,⁴³ about 200 from each of the three states, the union territory of Delhi, and the Central Government.⁴⁴ Based on the addresses of the applicants, a determination was made of whether they lived in rural areas or in towns, cities, or metropolises.

Admittedly, the sample of the study is biased towards the urban areas as it only sought copies of applications from the Central Government, the state headquarters and the district headquarters. Perhaps if rural PAs were included then the proportion of applications from rural areas would be significantly higher.

5.2.2 Estimating the gender divide

The gender of an applicant was determined on the basis of the name and title written on the copies of 987 applications that formed the sample, randomly extracted from the total of 3000 RTI applications that we had collected from sample public authorities across the country. Whereas names are not always accurate indicators of the gender of a person, it was assumed that there would be as many men as women with gender neutral names, thereby balancing out the errors. Also, gender specific titles (like Mr, Ms, *Shri*, *Shrimati*, *Kumari*, etc.) were rarely used by applicants.

⁴³ For framework of analysis, see annexure 7.

⁴⁴ Unfortunately, only 70 applications were received from Bihar and those also very late. Therefore, as a sample comparable in size to that of other states could not be had, the results of the analysis of RTI applications from Bihar have not been merged with other states from whom a full sample of about 200 could be randomly extracted from the applications received. The averages worked out in tables 5.1 to 5.6 do not, therefore, reflect the Bihar data. However, the Bihar data has been included in these tables separately in the last column.

Another source of information about the gender divide, and various other aspects of the profile of RTI applicants, were interviews of actual applicants. 192 applicants (180 in urban areas and 12 in rural areas) were identified and interviewed as a part of the study. Their interviews provided some understanding about the age groups to which RTI applicants belong, the work and jobs they do, their economic status, and whether they belong to any scheduled groups or backward classes.

5.3 Findings

5.3.1 Profile of the users of the RTI Act

Rural users of the Act

The rural research teams sought out and interviewed, in each of the 24 randomly selected villages, all the individuals who had filed an RTI application in 2011-13 and could be identified and located. A total of 12 RTI applicants from these villages were interviewed, giving a density of 0.5 applicant per village. By extrapolation, given that there are about 600,000 villages in India, there would be an estimated 300,000 RTI applicants from the villages of India over the two years, or 150,000 rural applicants per year. However, it must be remembered that the 12 applicants interviewed were the minimum number, for there must have been others that the rural research teams could not identify or contact.

A much higher proportion was suggested by another estimate, based on an analysis of the addresses of 987 RTI applicants who filed RTI applications during 2011-13. This analysis showed 14% of the applicants lived in rural areas, the remaining 86% living in urban areas (for details see Table 5.1 below). Using the earlier mentioned Commonwealth Human Rights Initiative (CHRI) estimate and our resultant extrapolation that 4 million RTI applications were filed in India in 2011-12, the figure comes to about 560,000 rural RTI applications filed per annum.⁴⁵

Urban users of the Act

Unfortunately, a methodology similar to the first one used for rural areas (described above) could not be applied to estimate the number of urban applicants. This was because, whereas in rural areas the field teams made an effort to interview all those whom they could identify as having filed an RTI application, this was not feasible in urban areas as the numbers were just too large. Besides, whereas in a village it was relatively easy to ask around and identify a large proportion, if not all, of the applicants, this was not the case in a large town or city.

Using the second methodology, and based on the CHRI estimates, the urban applicants for 2011-13 would be about 3.4 million per annum, as analysis of addresses done on a sample of 987 RTI applications shows that 86% of the applicants had urban addresses.

Gender

Disturbingly, 92% of the applicants whose applications were analysed were male with Assam and Rajasthan being over the national average with 96% each, and Delhi, Andhra Pradesh and the Central Government being below, at 90% each.⁴⁶ Though only one district and one state department of Bihar had responded⁴⁷ till the finalisation of this report, and from both these a total of 70 RTI applications

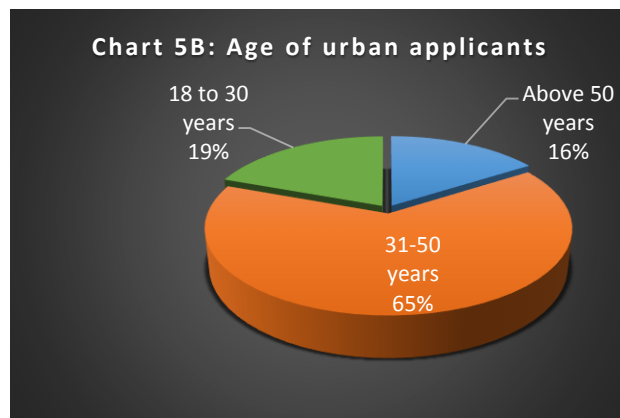
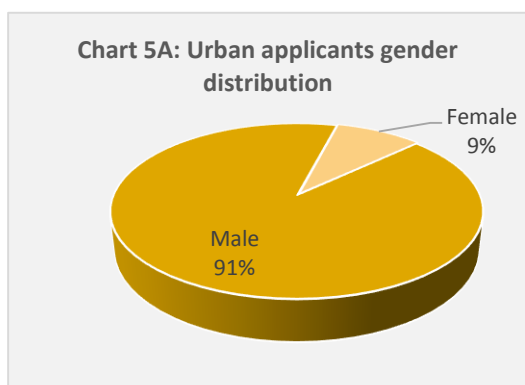
⁴⁵ Though the CHRI estimates and our extrapolation were only for 2011-12, trends suggest that the numbers of RTI applications are going up every year and, as such, the figure of 4 million per annum can be taken as a conservative minimum for each of the years being studied.

⁴⁶ Interestingly, of the 70 applications received from Bihar, only one was filed by a female applicant.

⁴⁷ Department of Rural Development, Government of Bihar, Patna, and the Department of Revenue, Purnea district, Bihar.

were received for 2011-13, their gender statistics were even worse, with only 1% of the applicants being women (Table 5.1).

Of the 180 applicants interviewed in urban areas, whose gender was recorded, 9% were female and 91% were male (see Chart 5A). Among the 12 rural applicants interviewed, two (17%) were women and 10 (88%) men.

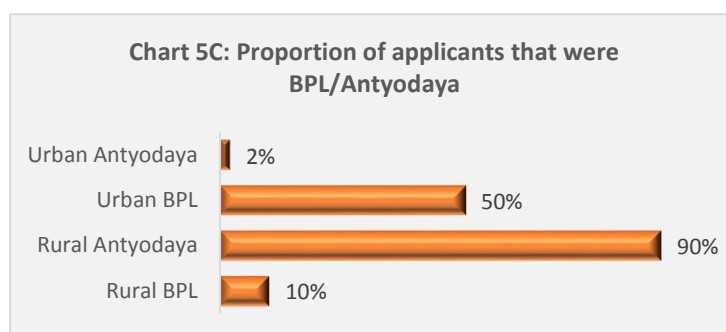


Age

A bulk of the applicants were between 30 and 50 years old, both in urban and rural areas. Whereas in the urban areas 65% of the applicants were in this age group (see Chart 5B), in rural areas 45% were from this age bracket and 27% each from the other two brackets.

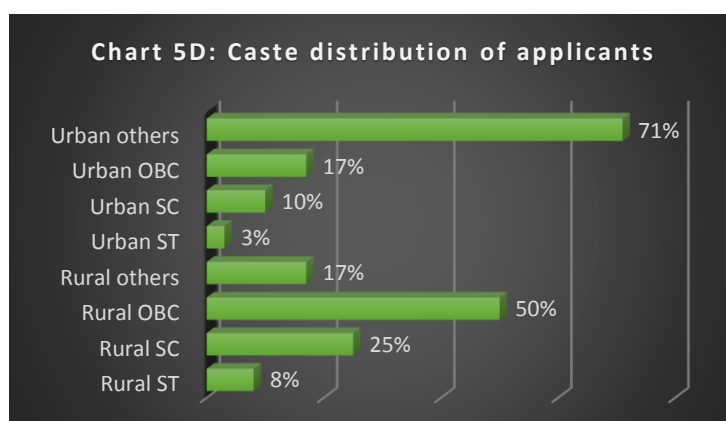
Economic status

It was heartening to note that more than half the urban applicants and all of the rural applicants were from among those living below the poverty line (BPL). In fact, 2% of the urban and 90% of the rural applicants belonged to *antyodaya* families (see Chart 5C). *Antyodaya* ration cards are given to the poorest of the poor from among those living below the poverty line.



Caste profile

The caste profile of the applicants (see Chart 5D)⁴⁸ also reinforces the fact that a significant proportion of the users of the RTI Act come from the historically weaker and marginalised groups.



⁴⁸ Note: All percentages have been rounded off so they do not always total to a hundred

Employment profile

RTI applicants also come from a diversity of professional profiles that represent the diversity of India's population (see Chart 5E).

5.3.2 Profile of the applications

Length of application

This has become an issue as the Central Government and some state governments have alleged that a large number of applications being filed with them were very lengthy and therefore wasted a lot of time of the public information officer. Consequently,

these governments have also made rules which set limits to the number of words that an RTI application can have, mostly 150 words, but 500 words in the case of the Central Government.

Our data suggests that the average length of RTI applications is 121 across the sample. Barring Delhi, where the average length is 178, in the other states and at the Central Government the actual average length was well below 150 (see Table 5.1).

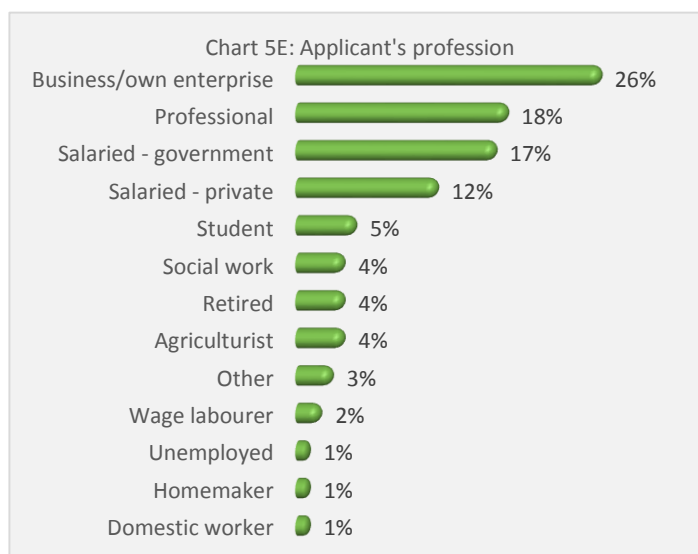


Table 5.1: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA

Who is asking and how?							
2011-13							
	AP	ASS	DEL	RAJ	CEN	Average	BIH
APPLICANT'S GENDER:	Percentage						
Male	90%	96%	90%	96%	90%	92%	99%
Female	10%	4%	10%	4%	10%	8%	1%
TYPE OF APPLICATION:	Percentage						
Single signatory	94%	93%	95%	99%	98%	96%	99%
Multiple signatories	0%	4%	0%	0%	0%	1%	0%
Application on letterhead	6%	3%	5%	1%	2%	3%	1%
LOCATION OF APPLICANT:	Percentage						
Village	14%	18%	0%	25%	11%	14%	79%
Town/City	82%	75%	6%	67%	59%	58%	21%
Metro ⁴⁹	4%	7%	94%	8%	30%	29%	0%
	Words						
Average length of application	109	84	178	116	117	121	106

⁴⁹ For the purpose of this study, the whole of the union territory of Delhi was treated as a part of the metropolitan city of Delhi.

5.3.3 Nature of information sought

Information about whom or what

The analysis of nearly 1000 RTI applications suggested that a little over 44% of the applicants sought information about people. 11% of these sought information about matters related to the applicant herself, another 3% about matters related to the family of the applicant, and 20% about other individuals, seemingly unrelated to the applicant. Nearly 5% sought information relating to groups of people or communities and, interestingly, only 5% of the applications seemed to be from public servants seeking information about their own service matters (see Table 5.2). This deserves special mention as there had been a rumour doing the rounds that a majority of RTI applications were from government servants seeking information about their own service matters.⁵⁰

Table 5.2: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA							
<i>The Information being sought is about whom or what?</i>							
2011-13							
	AP	ASS	DEL	RAJ	CEN	Average	BIH
	Percentage						
Personal matters	12%	4%	18%	14%	7%	11%	9%
Own service matters	8%	1%	2%	6%	8%	5%	0%
Own family matters	2%	2%	6%	3%	1%	3%	3%
Other individuals	29%	34%	17%	8%	13%	20%	4%
Group(s) of people/communities	1%	6%	3%	7%	9%	5%	0%
One or more PAs	22%	10%	25%	13%	36%	21%	27%
Private body(s)	0%	0%	1%	0%	3%	1%	0%
Specific location(s)	8%	6%	12%	5%	8%	8%	0%
Specific localities	5%	0%	10%	4%	1%	4%	0%
Specific village(s)/sub-district	11%	9%	2%	7%	2%	6%	34%
Specific town(s)/city(s)	1%	4%	0%	2%	2%	2%	0%
Specific district(s)	7%	7%	3%	12%	1%	6%	19%
Specific state	10%	26%	18%	16%	6%	15%	6%
Multiple states/region(s)	1%	1%	0%	1%	2%	1%	0%
Country as a whole	0%	1%	2%	1%	29%	7%	0%

21% of the applications sought information relating to one or more public authorities, and 1% about a private body, the latter presumably under section 2f of the RTI Act.

Specific administrative or geographical units attracted 49% of the RTI applications. These included specific locations in localities, villages, sub-districts, towns, and cities. These also covered the subject, states, regions, and the country as a whole.

⁵⁰ For a summary of some of the applications received, please see <http://www.rti-assessment.com/raag-undp-people-s-rti-assessment-2013-14.html>

There were some applications that sought information about more than one of the heads listed above. That is why the percentages do not add up to a hundred.

Table 5.3: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA							
<i>What type of information is being sought?</i>							
2011-13							
	<i>AP</i>	<i>ASS</i>	<i>DEL</i>	<i>RAJ</i>	<i>CEN</i>	Average	<i>BIH</i>
	Percentages						
Public Information that should have been proactively published	54%	46%	53%	36%	54%	49%	71%
Information that should have been given to an applicant without applying for it	20%	11%	24%	23%	12%	18%	23%

Table 5.4: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA							
<i>What does the information sought relate to?</i>							
2011-13							
	<i>AP</i>	<i>ASS</i>	<i>DEL</i>	<i>RAJ</i>	<i>CEN</i>	Average	<i>BIH</i>
	Percentage						
Norms	20%	11%	40%	19%	33%	25%	29%
Delays	3%	2%	3%	3%	2%	3%	11%
Decisions	48%	76%	60%	55%	44%	57%	47%
Action taken/proposed to be taken	42%	43%	51%	40%	27%	41%	44%
Dates of decisions/action/occurrences	11%	7%	14%	5%	10%	9%	9%
Basis of decisions	12%	10%	13%	15%	17%	13%	14%
Lapses	1%	4%	7%	5%	4%	4%	0%
Discrepancies in records	1%	0%	1%	0%	0%	0%	0%
Schemes/benefits/concessions/privileges	11%	12%	24%	13%	21%	16%	41%
Financial and public resources/facilities	21%	18%	19%	19%	23%	20%	27%
Compensations and rehabilitation	1%	5%	1%	2%	2%	2%	0%
Travel and cost of travel	0%	0%	0%	0%	5%	1%	1%
Socio-economic status/parameters	0%	3%	3%	7%	5%	4%	1%
Natural resources/occurrences	1%	3%	0%	1%	1%	1%	1%
Human resources	19%	21%	22%	16%	20%	20%	16%
Physical resources/objects	12%	13%	23%	19%	6%	15%	17%
Land	11%	8%	14%	15%	1%	10%	11%
Housing/buildings	1%	3%	9%	2%	2%	3%	1%
Moveable assets	0%	2%	1%	1%	3%	1%	0%
Roads	1%	0%	0%	1%	0%	0%	4%
RTI applications	3%	3%	1%	3%	2%	2%	3%
RTI systems	1%	2%	0%	0%	1%	1%	0%
Non-RTI communication	3%	2%	12%	15%	4%	7%	1%
Awareness/cognisance of facts/events	3%	29%	3%	1%	3%	8%	10%
Enquiries/investigations/assessments	11%	60%	17%	29%	13%	26%	6%
Examinations	4%	0%	1%	3%	4%	2%	1%
Existence/location of an entity	7%	5%	12%	5%	10%	8%	0%

What information

Alarmingly, 49% of all the information asked for in all the heads listed above was such that it should have been made public proactively, without anyone applying for it. Another 18% was such that it should have been provided to the applicant proactively without her having to apply for it (Table 5.3).

The earlier people's survey of the RTI regime (2005-08) had determined that 69% of the information being asked for should have been made proactively available (49% publicly, and 20% to the applicant).

Unfortunately, the situation hasn't improved in the last five years and even now 67% of all the information being asked for should have been proactively provided.

The most commonly asked for information was about decisions made or being made by public authorities (57%), followed by queries regarding action taken or proposed to be taken by public authorities (41%). Information about norms (25%), financial and public resources (20%), human resources (20%), and enquiries and investigations (26%), were the other popular topics. Again, many of the RTI applications sought information on more than one topic, hence the totals do not add up neatly to a hundred percent (see Table 5.4).

In fact, there are numerous applications (at least 16% of the sample) that ask for information which seems directly or indirectly related to a complaint or grievance. These include applications relating to delays (3%), lapses (4%), and discrepancy in records (0%), RTI applications⁵¹ (2%), and non-RTI communications⁵² (7%). However, they are clever enough to disguise their complaints and grievances as requests for information, so when an applicant asks, as they so often do – When will the work be done? Why has it not been done as yet? Who is responsible for the delay? What action will be taken against him or her? - then most often they are actually complaining and asking for help, but given the limitations of the RTI Act, disguising all this as a query for information. Therefore the small proportion that get classified as complaints and grievances, and not RTI applications, are just those that forgot to disguise themselves.

Case studies

Though summaries of over a hundred of the RTI applications analysed for this study are given on our website (<http://www.rti-assessment.com/raag-undp-people-s-rti-assessment-2013-14.html>), it might be useful to focus on a few types that are typical and very common, and a few that are innovative, especially interesting, or emotive.

Applications seeking information about norms, decisions, and action taken, are very common. Applications relating to delays are also common but often heart rending because people have been waiting for decisions and action for many years, sometimes for decades. Complaints and cries for help, disguised as RTI applications, demonstrate the ingenuity of the people of India to use whatever instruments are available to serve the purpose in hand – the famous Indian *jugaad*! They also show how the RTI Act has, for many people, become a last resort 'cure all' remedy. But most of all, they

⁵¹ These are invariably enquiring about why earlier filed applications had not been replied to, or asking for information that was not supplied in response to an earlier RTI application.

⁵² These are invariably enquiring about why earlier communication had not been replied to or acted upon, or asking for information that was not supplied in response to an earlier non-RTI communication.

demonstrate the failure of governance and its institutions to provide even basic services, information, or response to most of the Indian population.

CASE STUDIES: BOX 5.1 - Norms

1. *The applicant was an NCC cadet in school and stood 3rd in a shooting competition in an NCC camp. Now details his various educational degrees of four MBAs, M Com, M Phil, and under-progress PhD, and asks whether he is eligible for a state or central government job in the sports quota. [CEN/DOPT/2013/ENGLISH]*
2. *The applicant wants to have a list of old age home in Delhi, and wants to know the terms and condition to get a room in an old age home. [CEN/MOSJ/ 2013/ENGLISH]*
3. *The applicant wants to know the duties and responsibility of local police/ area SHO if authorized or unauthorized construction is noticed under their jurisdiction. The applicant wants to know the procedure adopted to differentiate between the two and whether local police can take suo moto action against authorized construction. [DEL/ POL/nd/ENGLISH]*
4. *The applicant wants to know the number of hours a policeman has to serve in a PCR in a day, and whether or not there is a weekly rest offered to the PCR unit. [DEL/ POL /2013/ENGLISH]*
5. *The applicant wants to know whether any order/notification regarding transfer of powers/responsibility under section 16 of the Delhi Preservation of Trees Act has been received by the Delhi police. [DEL/ POL /2013 /ENGLISH]*

Applications by government servants about the functioning of the government, and by RTI applicants about the functioning of the RTI processes, are fascinating because they become in a sense meta-applications, asking questions about the system by using the system. But perhaps the most interesting are the tongue in cheek ones, where one is not sure what is serious and what is not, and the most fascinating are the ones seeking historical information.

Norms:

About a quarter of the RTI applications filed sought information about norms. Invariably, these were about norms that should have been available to the public without them having to resort to the RTI Act. Of course, at least in some cases, they must have been available on some websites or other publicly accessible sources of information. However, the fact that so many people filed RTI applications in search for such norms suggests that either the location was not well known, or not easily accessible.

Many of the RTI applications sought norms related to personal needs and requirements, like in case 1 (see Box 5.1)⁵³ where an obviously overqualified person wants to know whether she is now eligible for a job under the sports quota of the government. Similarly, in the second case the seemingly aged applicant is wondering whether she is eligible, finally, for a room in an old age home. Cases three and four are about applicants seeking the norms that apply to others. And case five makes a pertinent query relating to the protection of the environment and what responsibilities have been given to the police in Delhi thereof.

⁵³ For an expansion of the codes used in the boxes as references for each case study, please consult the glossary at the beginning of the report.

Delays:

Though fewer in number, many of the RTI applications relating to delays starkly brought out the poor state of governance in many parts of India. Some of them also highlighted the pathetic plight of citizens of India (see Box 5.2).

CASE STUDIES: BOX 5.2 - Delay

1. *The applicant files this application on behalf of his client, whose property sale deed got registered in January 1997 at the office where the RTI application is filed. He now asks why after so many years, the registry document has not been handed over to his client. Says copies of the document and a related legal notice are attached. [DEL/HQ/REV/SUBREGISTRAR/2013/ENGLISH]*
2. *The applicant had applied for the post of gram sevak in June 1999, and took the required assessment test. He now wants to know marks obtained by him in the test, and whether he was considered in the OBC or the general category. Also refers to a department letter that says that his application did not have the required residence proof of the village where he applied for the post, and states that he had, in fact attached the document of proof of residence. Now also wants to know whether domicile credit points were added to his score in the assessment. [RAJ/DUN/RD /2012/HINDI]*
3. *The applicant was declared BPL in 2002 but has not been benefitted under the IAY as yet, and wants to know the reason why. Wants to know how much time and money is needed to be spent to get selected for IAY benefit, and also refers to two letters of the Dausa development officer in connection with said benefit to the applicant, and asks when a house will be allotted to him. [RAJ/HQ/RD /2013/HINDI]*

Decisions:

More than half of the RTI applications filed sought information about decisions taken, or those that should have been taken, by public authorities. Considering the decisions related to the public either individually or collectively, one would have thought that they would have been actively and effectively communicated to those who were affected. In fact, section 4(1) (d) of the RTI Act specifically lays down that each public authority shall proactively: “provide reasons for its administrative or quasi-judicial

CASE STUDIES: Box 5.3 – Decisions and their basis

1. *The applicant refers to a department notification of 08 July 2013 declaring that an explosive magazine unit is required to be at a distance of 1.5 km from the outer boundary of a village, whereas the Explosives Rules 2008 state that such distance would depend on the kg weight of the explosives. Now asks for the basis of the department notification that violates the Explosives Rules 2008. [RAJ/HQ/REV /2014/HINDI]*
2. *The applicant says that she had applied for a job in an anganwadi, and offered to run it from her premises, but was not selected. Subsequently she filed an RTI application for some information relating to the issue, but was not satisfied with the response. Through this RTI application, she asks for the following: reason why she was not selected for the post of anganwadi worker; basis on which another named relative was selected despite not having the required academic qualification. [DEL/HQ/WCD /2013/HINDI]*
3. *The applicant wants to inquire about the appointment of an anganwadi worker who received less marks than the applicant in the exam. She had twice earlier submitted applications to the district collector. She pleads for the related information and justice. [AP/ANA/REV /2013/TELUGU/ TRANSLATED]*
4. *The applicant has asked for a list of books banned by the Govt. of India, name of the respective authors, and reasons for the ban. [CEN/MHA/ 2013/ENGLISH]*
5. *The applicant wants to know whether the control of pollution division conducted any study relating to the impact on the human health and environment before proposing to establish thermal plants in Nellore district, and whether they have called for any reports from Animal Husbandry and pollution department before taking the above mentioned decision. [CEN/MOEF/2013 /ENGLISH]*

decisions to affected persons”. However, despite this, the number of applications seeking information about decisions made it amply clear that much remained to be done.

Particularly popular were queries relating to the basis for decisions. The first case in Box 5.3 is of an applicant who very sensibly asked the government why they are tampering with rules relating to the location of an “explosive’s magazine”. Similarly, in case five an obviously concerned applicant wants to know the basis on which it was decided that it was environmentally safe to locate power stations in a particular district. Another applicant, in case four, asks for more fundamental reasons for deciding to ban certain books. On the other hand, case two and three seek the basis for very specific decisions that adversely affect the applicant and seem to be unjust.

[To the government by the government:](#)

Though the earlier described concern that the RTI Act was primarily being used by civil servants to seek information about their own service matters was unfounded, yet we have discovered some fascinating examples of how people within the government are, perhaps out of exasperation, using the RTI Act to get information that should rightly have been theirs as part of their official functioning.

Of course, there are many cases where junior officers monitor the functioning of their bosses, by using the RTI Act. This exasperates the seniors, and perhaps often that is the purpose of it. A good example of this was the RTI application filed by a junior functionary of the DoPT asking his seniors for certified copies of the pollution check certificates of official vehicles used by Ministry of Personnel and Training, and DOPT officials, as on 08 January 2014, and on date of receipt of the application. He also asked for a copy of the documentation relating to any legal exemption from such pollution checks for ministry vehicles! However, all applications are not of this genre, and some of the other types are in Box 5.4.

The first case (Box 5.4) shows the junior officer of a legislative assembly writing to no less than the Chief Secretary of the State asking for an official document which he needed to procure as a part of his official functioning, but had not succeeded in getting even after six reminders. This demonstrates the mind-boggling potential of the RTI Act where government functioning can be speeded up many times over if officers used this Act to speed the movement of files and response and action on letters.

CASE STUDIES: Box 5.4 – To the government by the government

1. *Assistant Secretary of Rajasthan Legislative Assembly (RLA) has filed an RTI application to Chief Secretary regarding the 'Review report' on the enlisted recommendations in the 78th report by Public Accounts Committee (2004-05). The mentioned report was to be sent within six months after re-evaluation by Chief Accountant General for which the applicant has already sent six reminders. Via this RTI application he seeks the aforementioned 'Review Report'. [RAJ/HQ/RD/2010/ HINDI]*
2. *The applicant is a chargeman working with the government Mint in Kolkata, and is aggrieved that though the chargeman's post is at the same level as the engineer's, the former is required to submit his/her gate pass when exiting the gate in the middle of the working day, the engineer is allowed out without doing so. He now asks how and why, in the same organisation there are two different rules for employees at the same level. [CEN/MOF/ 2013/ENGLISH]*
3. *The applicant wants to know whether he is a member of the selection committee for anganwadi workers or not; he wants to know the maximum marks he has provided to each candidate. Also wants to know if approval has been taken on the list of marks awarded to each candidate who attended the interview. [AP/ANA/WCD/nd/ENGLISH]*
4. *The applicant, a police employee, seeks a copy of an order dated 29 January 2009, related to her own service matter, which involves her having applied for and received money for spectacles, which in fact, according to her she did not receive. [DEL/EAST/POL /2013/HINDI]*

The second case is the more typical query from a civil servant seeking to ensure that proper protocol was followed and that she was given all the privileges due to her. The third is a curious case of a functionary seeking to find out whether he is a member of a committee or not. And finally, the fourth case, demonstrates the pathetic lack of communication within a public authority where officials need to file RTI applications in order to access ordinary, everyday, information relating to their own service matters. It makes one wonder how a government which is so opaque to its own employees could ever be transparent to the general public.

Action taken:

Over 40% of the RTI application sought information about action taken or proposed to be taken. A large proportion of the queries seek reasons why action was not taken and when it will be taken, rather than what action was taken. This is appropriately the second most popular topic for seeking information, after decisions, for making decisions and acting upon the decisions form the essence of governance.

CASE STUDIES: Box 5.5 - Action taken

1. *The applicant in regard to an earlier submitted petition (non-RTI) wants to know what action has been taken on his petition till date. The earlier petition was filed as the panchayat head/sarpanch refused to sign on a paper which enlisted names of the scheduled caste people in the village so that they can also avail/opt for the welfare work for the scheduled caste BPL category people. On the contrary, the official claimed that since these people do not vote for him he will not sign any paper in favour of the SCs. [BIH/HQ/RD /2013/HINDI]*
2. *The applicant refers to an earlier RTI application to which he says he received no response. Files this application, possibly for the same information. Information sought relates to the unauthorised occupation/use of the applicant's land about which he had complained a year earlier, and seeks a response about action taken, why no action has been taken so far, why only two persons have been named as unauthorised occupants and other names left out, and why from the collector to the village level, the department staff is unable to do anything about evicting the occupants, and when he can expect action to be taken. [RAJ/HQ/REV /2013/HINDI]*
3. *The applicant says he had filed a complaint against the gram panchayat for fraud and cheating in the works being done in the panchayat, in November 2012. He now asks what action has been taken in response to his complaint, and wants a point-wise explanation, as asked in his complaint letter, along with documented proof of action taken or proposed to be taken. [CEN/MRD/2013/HINDI]*
4. *The applicant wants to know what action is being taken to stop the sale of "SARA" in Annojiguda in the Ghatkeasrmandal, and to stop the sale of liquor in general stores in the area. [AP/HQ/REV /2013/ENGLISH]*
5. *The applicant's husband, she states, was hit by a car on 04 October 2011, and subsequently died. Two months hence, she files this application requesting that the guilty be found and punished, saying she cannot file an FIR because of the delay, during which she, along with others, was trying to "follow" the car that hit him. [STA/ASS/KAR/POL /2013/ASSAMESE /TRANSLATED]*
6. *Wants to know what action has been taken by the Planning Commission to control the increase in prices of "daily commodities" and to ensure prices of day to day commodities do not increase. Demands to know the measures being taken for the same, and the reason behind this price hike, quoting the astronomical hike in onion prices. [CEN/MOF/ECOAF /2013/ENGLISH]*
7. *The applicant wants to know what steps have been taken since independence to eradicate the rich - poor gap, what have been the results of these steps, what good has this done to SC/ST and OBC. If they have not been affected then wants to know the reasons. [CEN/MOSJ/DSJ/2014/ENGLISH]*
8. *The applicant complains of the pathetic state of the alcohol de-addiction centres of the country, and seeks the following information: whether the Delhi government is considering closing down such centres; whether the Delhi government or the central government is considering formulating new laws/rules to bring discipline to these centres. [STA/DEL/HQ/WCD/nd/HINDI]*

There are various types of queries about what action was taken, or why no action was taken. Some of these relates to specific complaints made to the public authorities, as is typified by case studies 1, 2, and 3 of Box 5.5. Another type of query, as seen in cases four and eight, seeks to know what action the government is taking to implement a specific policy, in this case relating to controlling the easy access of liquor. The fifth case is more a request for action than a query about why action was not taken or what action is proposed to be taken. In this case, a distraught wife seeks apprehension of those responsible for her husband's death. Cases six and seven are of the other extreme where governments are asked to describe what action they have taken to meet with their most fundamental commitments of reducing prices and promoting equity.

Complaints:

The ingenuity of the Indian public is at its best while innovatively using the RTI Act. Though the Act is mainly about seeking information, and given the fact that it is often far more effective than other available remedies for inaction or delay, the people of India have perfected methods by which they not only register complaints but actually get them acted upon, all in the guise of seeking information. Some examples of such RTI applications are given as cases in Box 5.6.

CASE STUDIES: Box 5.6: Complaints disguised as RTI applications

1. *The applicant details several futile attempts to get the patta (area) of his land, on which he converted his "kachha" house into a "pucca" one. Chronicles applications for the same from 2001 to 2012, including an application submitted at the Gaon Ke Sang program on 06 January 2011, one given to the collector at a "jan-sunvayee" (public hearing) in April 2011, and a complaint lodged in 2012 via a state government helpline, which have yielded no result. Adds that despite being educated and now a senior citizen at 63 years, not only has he received no help, but has also been at the receiving end of insults and bad behaviour, and wonders what the illiterate go through when educated people are treated in this manner. [RAJ/HQ/RD/2012/HINDI]*
2. *Gives the complaint numbers of 4 complaints lodged with the vigilance wing of the railway board and says that since he has not received any information on their progress from the concerned office, he is now "forced to" use the RTI route to ask for the investigation conducted in them. [CEN/N-RLY/VIG/2013/ENGLISH]*
3. *Seeks water related details of Buradi in Delhi. Information sought: whether the water supply there is now under the Delhi Jal Board, and if not, the name of authority it is now under; name and phone number of the pump operator of his colony. Complains about the erratic water supply and irregular billing cycle, and asks for a response not only on paper but also in action to improve the situation on the ground. [DEL/HQ/REV/ 2013/HINDI]*
4. *The applicant refers to an application for a "police character certificate" for a female family member, for which they applied in September 2013. He then complains that the head constable of the area has been harassing the said lady by calling her to the police station on some pretext or the other. He now asks for the following: for the case to be registered under Lok Sewa Guarantee and Right to be Heard, and copies of documentation of the same; copies of the action taken by the police station at Dhambola in the case. [RAJ/DUN/POL /2013/HINDI]*
5. *The applicant has filed a complaint using RTI as no action was taken on his earlier complaint against a person who has been misusing the names of Joint collector of Kurnool and looting poor tribal people. [AP/ANA/POL /2013 /TELUGU]*

Tongue in cheek?

Though most RTI applications are very serious and deal with matters of great import, it is refreshing to note that even among the universal despair, frustration, and helplessness that characterises a large number of the applicants, there are some who seem to have retained their sense of humour. The two

case studies in Box 5.7 make us wonder what these applicants were thinking and how serious were they.

CASE STUDIES: Box 5.7 – Tongue in cheek?

1. *The applicant informs the addressee that the village he resides in, is not being developed under any village development programme or scheme. **He wants to know what step he shall take to get the work done. He has listed 3 options – dharna (protest by squatting), or hunger strike, or self-immolation. He also wants a copy of the 'suggestion' given by the official in this regard.** [BIH/HQ/RD /2013/HINDI]*
2. *Refers to the Delhi government's promise to give aid to widowed women for getting their daughters married and asks why a named person, who had submitted an application for the same with the local legislator in November 2012, had not yet received the promised aid. Also adds that a lady inspection officer visited the widow and asked for ₹ 5000/- to clear the grant, **and asks whether this is a fee that needs to be deposited to get the grant.** [DEL/HQ/WCD/ 2013/ENGLISH]*

History:

A fascinating use of the RTI Act has been made by historically minded applicants who have sought historical information from the government on various matters. Some of the more interesting examples are listed below in Box 5.8.

CASE STUDIES: Box 5.8 – Historical information

1. *The applicant wants copy of the report of Thakkar Commission on Indira Gandhi Assassination, wants video footage of her murder and wants to know when were Satwant Singh and Beant Singh (the assassins) killed. [CEN/MOC/NAI/2013 /ENGLISH]*
2. *The applicant wants to have a copy of the birth certificate and a copy of the post mortem report of Mahatma Gandhi, Indira Gandhi and Rajiv Gandhi. [CEN/MOC/NAI/2013 /ENGLISH]*
3. *The applicant wants to know the terms and conditions on which 'Britishers' left India in 1947 and also the terms and conditions agreed upon between India and Pakistan in 1947. [CEN/MOC/NAI/-nd/ENGLISH]*
4. *The applicant wants to know when Subhash Chandra Bose first appealed for help from the German government; he wants to know the amount given as help to Azad Hind Fauj by the German government. The applicant also wants to know whether this amount was given as a loan and was it supposed to be returned. [CEN/MOC/NAI/2013 /ENGLISH]*
5. *The applicant wants to know when India was colonized and by whom it was colonized. [CEN/MOC/NAI/2013 /ENGLISH]*
6. *Seeks details related to the 1971 Bangladesh liberation war. Information sought: total expenditure incurred by India on the war; whether RBI printed currency notes in excess of the regular amount in 1971; inflation rate at the time; whether India offered financial aid to Bangladesh, and if so, the quantum of that aid; funds spent on Bangladesh migrants who were living in camps in India. [CEN/MOF/ECOAF/ 2013/ENGLISH]*
7. *The applicant wants copy of documents, correspondence intelligence files relating to the act of Razakars and Hyderabad state forces, copy of cabinet notes, correspondence documents by Sardar Vallabh Bhai Patel, Pandit Nehru regarding police action in Hyderabad state and regarding liberation of Hyderabad and its aftermath. [CEN/MOC/NAI/2013 /ENGLISH]*

Cries for help:

The RTI Act has provided a forum by which the people of India can file complaints with a far better chance of their being acknowledged, taken note of, and perhaps acted upon. In addition, it has also provided an opportunity for people to have the government take notice of their cries for help. Again,

the applicant has to show ingenuity and disguise the cry for help and make it look like a request for information.

Box 5.9 gives examples of five such cries. Case one is essentially a plea from a displaced community whose primary, perhaps sole, source of earning has been taken away by the introduction of machines. However, their effort to acquire one such machine so that they could again earn a living has been frustrated.

The second case is a cry for help from a woman who is seeking to get her husband admitted into an alcohol de-addiction centre, but is from below the poverty line and cannot afford to do this on her own. Cases three and four are request from pensioners, and case five is about a daughter whose father has died and yet she cannot collect his dues. Case six makes you wonder what circumstances would force a wife to file an RTI application to find out how much her husband earns!

CASE STUDIES: Box 5.9 – Cries for help

1. *The applicant informs the addressee that she belongs to the Vaddi community which majorly depends on digging of wells, ponds, canals and clearing of the lands as the only source of income generation. Due to the new machinery they have been unemployed hence they applied for a JCB (a digging machine) in 2007 to the collector, with the help of a welfare society, but have received no information till date. She pleads that the addressee inform her about the above as soon as possible. [AP/ANA/REV/2013/TELUGU]*
2. *The applicant is a BPL card holder and seeks details related to Nasha Mukti Kendras (alcohol de-addiction centres) for her alcoholic husband. Information sought: address of one such centre for BPL card holders, which is free of cost; names and addresses of officials in the centre; rule-book of these centres; whether BPL card holder women in such situations are provided financial or other aid. Asks for a recommendation from the chief minister's office to help get her husband admitted to one such Kendra for de-addiction, and for financial support, if such is provided. [DEL/HQ/WCD/2013/HINDI]*
3. *The applicant makes a request on behalf of an old person that his pension should not be stopped as he does not have any other source of income. [DEL/NW/WCD/2013/ENGLISH]*
4. *The applicant wants to know why his pension was stopped after August 2013. [DEL/NW/WCD/2013/HINDI]*
5. *This is a plea for help. The applicant's father was employed with the Indian Security Press at Nasik, and passed away while in service. She subsequently applied to the concerned departments for benefits like his PF, gratuity and others, as his court-declared sole heir, through non-RTI and then RTI applications, but to no avail, even though she deposited all asked-for documents. She now asks the department to intervene and solve the issue in her favour as she is in dire need of financial assistance. [CEN/MOF/ECOAF/2013/HINDI]*
6. *Asks for the salary particulars of her husband, posted as SI at the Puttaparthi Urban PS. [AP/ANA/POL/2013/ENGLISH]*
7. *The applicant claims that his father had bought a 1.5 acre field 15 years ago, but both seller and buyer died before ownership could be transferred. He now asks for a "solution" to help get the land registered in his name. [AP/HQ/REV/2013/ENGLISH]*

[RTI applications about the RTI process:](#)

Though the RTI Act does not provide for it, there are many applications that address aspects of the RTI process itself. Some examples are given in Box 5.10.

CASE STUDIES: Box 5.10 – RTI applications about the RTI process

1. The applicant informs the addressee that he wants to withdraw his earlier application and no more seek the information asked for, as he states that he no longer needs the information. [BIH/HQ/RD /2013/HINDI]
2. The applicant refers to a CIC order to impose a penalty of ₹ 25,000 on a PIO (named) and asks whether a penalty of ₹ 5000 had been deducted from the PIO's December 2013 salary as per the CIC order and whether the amount had been remitted by 10 December 2013. Also wants to know whether a similar amount will be deducted in January 2014, and whether any appeal against the said order has been made with the CIC, and if so, wants the date of the appeal. [DEL/HQ/REV /2013/ENGLISH]
3. The applicant refers to a copy of a letter he received from the department relating to some information he had supposedly sought from the department (which according to the applicant, he had not). He now asks, via this RTI application, what action the department is going to take against the person who forged his signature and asked for information using his identity. [RAJ/KAR/PHED /2014/HINDI]
4. The applicant refers to an RTI application filed with his gram panchayat, on 25 June 2013, to which the applicant not only got no response, but on verbal reminder for the same, was also being forced to withdraw his application for information. He now applies to the department at the HQ level to intervene and ensure the provision of information as requested. This application is filed just one week after the original RTI. States that a copy of the RTI application is attached. [RAJ/HQ/RD /2013/HINDI]

5.3.5 In what form is information being asked for

Information was most commonly asked for (73%) as a response, where a specific query was posed and an answer was sought. In 47% of the cases there was a request for a specific document or record. In 20% of the cases both a response and copies of documents were asked for (see Table 5.5).

Though the Indian RTI Act is one of the few acts in the world which allows you to access samples, documents or sites, and access the deliberative part of a file, commonly referred to as file notings, there was very little demand for these innovative ways of accessing information. Many of the RTI applications sought information in more than one form.

Table 5.5: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA							
In what form is the information being asked for?							
2011-13							
	AP	ASS	DEL	RAJ	CEN	Average	BIH
	Percentages						
Response	68%	83%	84%	53%	79%	73%	51%
Copy of document	53%	53%	38%	52%	37%	47%	60%
Inspection of document	0%	1%	0%	1%	0%	0%	1%
Inspection of sites/objects	0%	0%	0%	0%	1%	0%	0%
Samples	0%	0%	1%	0%	1%	0%	0%
File "notings"	4%	2%	4%	3%	4%	3%	0%
Electronic copy	1%	1%	2%	0%	1%	1%	1%
Format/proforma	5%	4%	1%	2%	1%	3%	0%
Statistics/data	3%	12%	6%	5%	4%	6%	0%

5.3.6 Problematic applications

From time to time there is negative propaganda against the RTI Act and accusations that it is being misused to file frivolous, vexatious, or voluminous applications. It is alleged that such applications waste the time of the public authority without serving any public purpose.

Our analysis suggests that less than 1% of the applications were vexatious or frivolous⁵⁴, and a little over 1% were voluminous, in terms of requiring a lot of information (see Table 5.6). Though there is no legal bar against seeking voluminous information, nevertheless it could divert time of public servants and adversely affect their work. However, we found that a very large majority of the voluminous applications were asking for information that should have been disclosed proactively. Therefore, clearly it is neither the RTI Act nor the applicant who is to blame.

Table 5.6: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA							
<i>Problematic Applications</i>							
2011-13							
	AP	ASS	DEL	RAJ	CEN	Average	BIH
	Percentage						
Vexatious	0%	0%	1%	0%	0%	0%	0%
Frivolous	1%	0%	0%	0%	0%	0%	0%
Unclear	0%	0%	0%	1%	0%	0%	3%
Voluminous	1%	2%	3%	1%	0%	1%	1%
Infringement of privacy	0%	1%	0%	1%	1%	1%	0%
Long time span	1%	1%	2%	1%	2%	1%	4%
Complaint - not RTI	4%	0%	2%	1%	2%	2%	0%
Grievance - not RTI	2%	0%	3%	3%	2%	2%	1%
Asking for help - not RTI	2%	4%	2%	6%	3%	3%	4%
Others	0%	0%	0%	0%	1%	0%	1%

Sadly complaints, grievances, and cries for help continued to be submitted in the guise of RTI applications, and 7% of the applications could be collectively classified under these heads. Technically these were liable to be dismissed as not being legitimate RTI applications. However, the fact that people continue to file these under the RTI Act, added to the fact that many of the illegitimate RTI applications are also disguised complaints, grievances, and requests for help, seems to suggest that

⁵⁴ While looking for vexatious applications, our first problem was to understand what exactly was meant by the term “vexatious”. Though the term was often used to beat the RTI Act with, we could not find an appropriate definition. In any case, those who had used it in the context of the RTI Act, notably the former Prime Minister and the Second Administrative Reforms Commission (Ethics in Governance. 4th Report of the Second Administrative Reforms Commission. January 2007. Recommendation 20. Summary of Recommendations: Pages 173-194. <http://arc.gov.in/>), had not defined it. We, therefore, decided to classify those applications which used foul language, made threats, or made seemingly unfounded allegations, as being vexatious: understandably vexing the PIO who received them.

It was even more difficult to find frivolous applications. The term “frivolous” was also undefined and was not easy to define in the context of the RTI Act. We finally decided to classify those applications as frivolous where it seemed that the applicant was not seriously seeking information but either being silly, trying to be funny, or using the RTI not to access useful information but to clearly serve some other purpose. But, strictly speaking, it was almost impossible for us to be certain whether the applicant was seriously trying to seek information or was just trying to be funny. Similarly, if the right to information was a fundamental right, should we be concerned about whether a piece of information has a purpose or can be of any use to anyone. Besides, how do we know to what use innovative minds might put any bit of information.

other avenues of public interface with the government do not seem to be working very effectively. It also seems to suggest that people still have faith in the RTI Act and its ability to make the government listen when all else has failed.

5.4 Discussion

5.4.1 Profile of the RTI Applicant

Gender:

Perhaps the most disturbing finding relating to the profile of RTI applicants was that very few women, as a proportion of applicants, were using the RTI Act. Unfortunately, none of the studies including this one seemed to have analysed the reasons for this. It can be speculated that perhaps historically the men dealt with the government, and this might continue to influence the decision on who files the RTI application. It can also be argued that awareness levels about the RTI are perhaps lower among the women, without being clear why this is so.

More serious is the possibility that in the mind of the public there are serious risks and threats associated with the filing of RTI applications. Perhaps this is resulting in there being a dis-inclination to support, or even allow, women to file RTI applications in their own name.

Speculation apart, this is clearly an area that needs urgent and focused investigation.

Rural representation:

Less worrying, but perhaps still problematic, is the finding that, though 70% of India's population lives in rural areas, only 14% of the RTI applicants are from rural areas. Even though this percentage might increase if rural institutions were covered in the sample, earlier studies done by RaaG, which included in the sample local institutions, suggest that the increase would not be by much.

Again, it can be speculated that this is because there is better delivery system and governance in the rural areas than in the urban areas, and that the grievance redress and complaint response systems in rural areas work better than their counterparts in towns and cities. However, there is no evidence to support this, in fact to the contrary.

Apart from lower levels of awareness, lower literacy rates, and a greater sense of disempowerment and helplessness, most worrying is the possibility that threat perceptions are significantly higher in the rural areas. These possibilities also need to be urgently investigated and addressed.

Single and multiple signatories:

The RTI Act is somewhat unclear on whether organisations or groups can also apply for information. It recognises this as a right of citizens and case law suggests that whereas an organisation or a group can be a person, it cannot be a citizen. Therefore, there has been some discussion of whether a large number of organisations are trying to use the RTI Act in a manner that might not be legal. Our findings suggest that this is not so, for only 3% of the applications were on a letterhead. Even when an application is on a letterhead, if it has a specific signatory then the PIO is obliged to treat the application as having been submitted by the signatory rather than by the organisation.

A suggested strategy, especially to disempowered groups, in order to protect themselves from powerful vested interests, is to submit an RTI application as a group rather than as an individual, essentially with multiple applicants so that their application is legally valid. However, given the fact

that only 1% of the applications had multiple signatures, clearly this is a strategy which is either not being used or perhaps not required.

Socio-economic profile:

The fact that a significant proportion of the RTI applicants were from among BPL and *antyodaya* families, and belonged to scheduled castes and tribes, and to other backward classes, was a heartening sign that the RTI Act was being used by the poor and historically marginalised people, and not just by the rich and the powerful.

5.4.2 Types of information asked for

The fact that nearly 70% of the RTI applications continue to seek information that should either have been made public proactively or communicated to the applicant without needing to file an RTI application, is perhaps the most worrying finding of the study. This is especially so because the earlier study done by RaaG, covering the period 2005–08 had shown similar percentages. This means that there has been no progress on the issue in the last five or six years.

As has been discussed elsewhere, perhaps the most urgent priority relating to the RTI regime in India is to significantly improve proactive disclosure under section 4 of the RTI Act and under various other laws and regulations. It has been argued that the two most important reasons why compliance with section 4 of the RTI Act is still weak is the fact that the RTI Act does not fix responsibility for compliance with section 4 and, consequently, no penalty seems to be envisaged for its violation. This is an issue that needs to be addressed urgently.

Another worrying factor is that a large proportion of the RTI applications are actually disguised complaints and grievances. Ideally, the RTI Act should address systemic issues and problems within governments and other laws and mechanisms should be in position to deal with the day-to-day complaints and grievances. When occasionally these systems fail, the RTI Act can be used to expose such failures and thereby to deter them. However, as seems to be the case in India, where these systems do not work at all, the people have no other choice but to try and address each specific complaint and grievance by filing RTI applications.

Perhaps when the proposed grievance redress bill is finally passed then many of the grievances and complaints disguised as RTI applications will cease to clog the system.

6. EASE AND CERTAINTY OF ACCESS TO INFORMATION

- *How often we get information in response to an RTI application differs from public authority to public authority. Therefore, we got 87% of the information requested from state and central nodal agencies, but only 45% from sample of PAs in various states and the Central Government.*
- *The success rate claimed for RTI applications also varies, depending on who provides the information. When we asked our sample PAs what their own records indicated, they claimed that they had provided the asked for information in response to 81% of the RTI applications received. However, we received only 45% of the various bits of information we had asked for from these very sample PAs. On the other hand, the urban applicants claimed that only 44% of the requested information was forthcoming.*
- *According to government data, 87% of the information that was sent was sent in time, and the remaining 13% sent late. For applications filed by RaaG with sample PAs, 41% of the information was received in time. A little over 50% of the information received was in time for applications filed by the RaaG team with nodal departments.*
- *In terms of providing the asked for information, based on the government's claims Delhi performed the best with a 94% record and Andhra Pradesh was the worst with a 64% record, Assam was a little better with 65%. Our experience, based on the RTIs we filed with a sample of public authorities, was that the Central Government provided 51% of the information asked for, followed by Delhi with 45%, and Bihar came in last with a meagre 21%.*
- *Except for first appeals filed with the Central Government or Delhi Government, there is less than 4% chance of getting any information by filing a first appeal.*

6.1 Introduction

Perhaps the most critical question sought to be answered through this assessment is: how successful is the RTI regime in giving timely access to needed information? For, what really matters at the end of the day is how many of the applicants actually received the information they asked for, how easy it was for them to access this information, and how useful it was.

Clearly there are many tests for the success or failure of an RTI regime. Some of the other parameters, like levels of awareness, profile of RTI applicants, efficacy of proactive disclosures, functioning of the information commissioners, preparedness among public authorities to respond to RTI applications, and even the rules and processes relating to the RTI law, have been dealt with elsewhere in this report. In this chapter an effort is made to capture the experience of applicants, by interviewing them, by collecting secondary statistics about them, and by becoming applicants ourselves.

Each of these methodologies has some advantages and some disadvantages. Some of these have been described in the section on methodology. However, it must be kept in mind that all refusals of RTI applications are not necessarily invalid. And, whether an application asks for information that is allowed under the law or not, can only be determined after reading each application and, where relevant, the reasons why it had been rejected. Therefore, only for the applications we filed ourselves can we assert that all of them were asking for information that was not exempt under the law.

It is only for the applications that we have ourselves filed that we can say with certainty that they sought information allowed within the RTI Act, in a form and using a process that was legitimate.

Therefore, if an assessment has to be made on success rates then it is best to look at the statistics relating to applications filed by RaaG with a sample of public authorities.

We could also, with greater legitimacy, compare the performance of the various states and public authorities without having to worry about whether their performance was somehow being affected by the legitimacy or illegitimacy of the applications they were getting rather than their own willingness to abide by the law. Besides, we reckoned that our own questionnaire was not a very easy one to answer, as it asked for data and photocopies of documents and so would have required some effort, but was not a very difficult one as it did not ask for any “sensitive” information which could expose vulnerabilities in the public authorities or be considered a prime candidate for one of the exemptions. Besides, the compiled data we had asked for was, in any case, mostly required to be compiled in any case by each public authority under section 25(3) of the RTI Act.

On the other hand, our sample only covers five of the many public authorities found at the state and district level, and ten of those found within the Central Government. Therefore, the findings emanating from the analysis of applications filed by us would carry the biases that are peculiar to the public authorities in our sample. For example, we have not looked at public authorities related to the health⁵⁵ and education sectors. Public data suggests that these are very popular public authorities for filing RTI applications and perhaps would add a different profile of applicants and applications.

6.2 Methodology

6.2.1 How often do applicants get information?

To determine the probability of receiving information through a request under the RTI Act, three independent methodologies and four data sets were used.

First, 180 urban and 12 rural applicants were interviewed and asked whether they had received the asked for information, and received it in full, and in time. This gave us the applicant’s experience.⁵⁶

Second, data regarding the disposal of over 84,906 RTI applications (2011-12 and 2012-13) were accessed from 130 PAs across the country, by filing RTI applications (copy of RTI application 1 at annexure 4). This gave us the public authority’s official version of how many applications were successful, and to what extent.

Third, we tracked and monitored 462 RTI applications that were filed by us with 70 public authorities. We filed two different applications with each public authority, essentially asking for copies of RTI applications received, responses given, registers maintained and various other information relating to their handling of RTI applications and appeals. These two applications (copies of RTI applications 1 and 2 at annexure 4) were filed with:

- Ten public authorities of the Central Government;
- Four public authorities in the headquarters of each of four states and the UT of Delhi, a total of 20;
- Four public authorities in each of two districts, in each of the four states, a total of 40.

⁵⁵ Except in Assam

⁵⁶ RTI applicant interview questionnaire as annexure 6 at <http://www.rti-assessment.com/annexures.html>

For a complete list, please see chapter 2 on methodology.

This tracking exercise gave us our own statistics of how many applications are successful, to what extent, and how quickly. The added advantage of this method was that as we knew what information had been asked for and the applications filed with different PAs and states were identical, we were also able to judge which type of PAs or which states was performing better. This was not possible with the other methods as unless one knew all the details of what had been asked for, the procedures followed, reasons that had been given for rejection, etc., it was not possible to determine which of the rejections were justified or unjustified.

Fourth, we also filed an RTI application (copy at annexure 6) with the nodal RTI department of each of the 34 states and union territories and with the Department of Personnel and Training (DoPT) in the Government of India (total 35 PAs), asking for various types of information. We tracked the resultant 81 RTI applications and monitored their progress.

Fifth, 202 RTI applications were filed with the 28 information commissions, asking for information relating to their composition, support systems, budgets, backlogs, disposal rates and various other aspects of their functioning.

To summarise, we interviewed 180 urban and 12 rural RTI applicants regarding their RTI applications, got secondary data from 130 public authorities for about 85,000 RTI applications dealt with by them, and tracked 745 applications that we filed ourselves, with 133 public authorities, to determine the probability of getting a response to an RTI application, getting part or all of the information sought, and of getting all this in time.

Invariably the number of RTI applications we had to deal with became much larger than the number we had originally filed. This is because many of the public authorities transferred whole or part of our application to their subordinate offices and directed them to respond to us directly. Consequently, for us they became separate applications for which additional costs had to be submitted, first appeals filed and their progress tracked.

In most cases, these applications were forwarded to subordinate offices because the information we sought was not available in a consolidated form with the district or state headquarters of the public authority. However, as per the RTI Act, in such cases the PIO at the state or district headquarters of the public authority should have asked the subordinate offices, invoking section 5(4) of the RTI Act, to provide her with the required information, and then sent it to us.

The RTI Act envisages transfer of RTI applications from one public authority to another and not from one official to another in the same public authority. Section 6(3) of the RTI Act, which talks about such a transfer, states:

“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:”

Nevertheless, public authorities have been happily transferring applications within the same authority. Perhaps the most dramatic example was the Northern Railways, which transferred the two applications filed by us to over 70 subordinate offices, and a close second was the Delhi Urban Shelter Improvement Board (DUSIB) that transferred our applications filed with the state headquarters PIO to over 50 subordinate offices, forcing us to deal with each of these separately.

It might be noted that in the information provided by PAs regarding their own statistics of how they dealt with RTI applications (table 6.1), about 15% of the applications were reported as being transferred. However, it is not clear how many were legitimately transferred to other PAs and how many were illegitimately shown as transferred within the same PA.

6.2.2 How useful is it to file a first appeal?

An answer to this question was sought from three data bases: the analysis of the 462 RTI applications that RaaG filed with the sample of 70 PAs, the analysis of the 81 applications filed with 35 RTI nodal agencies, and interviews of the urban applicants.⁵⁷

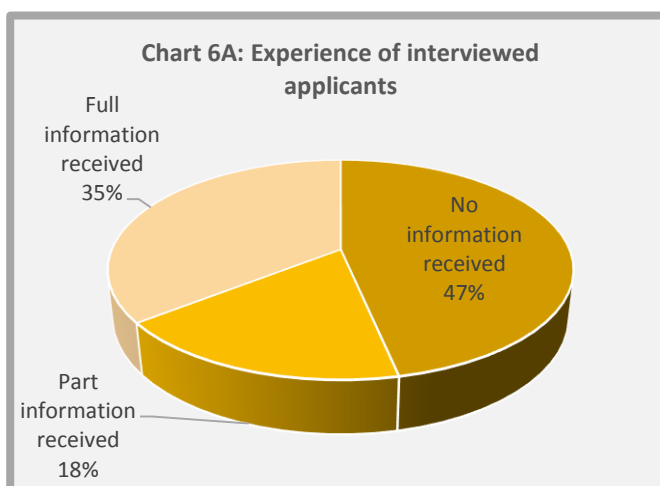
Though governments were also asked to provide this data from their records, the response was very sketchy, mainly because this information was often not available with the PIOs and the first appellate authorities who should have maintained such records also seemed ill-equipped to provide the information.

6.3 Findings

6.3.1 What is the success rate of RTI applications?

Experience of the applicants who were interviewed

The 180 urban applicants that were interviewed as a part of the study reported that they received full information for 35% of their RTI applications, part information for another 18%, and no information for 47%. Giving half a point for part information, their success rate was 44% (Chart 6A). Interestingly, this was just one percent lower than our own success rate of 45% (described in the next section). Seven of the 12 rural applicants (58%) that were interviewed also received information.

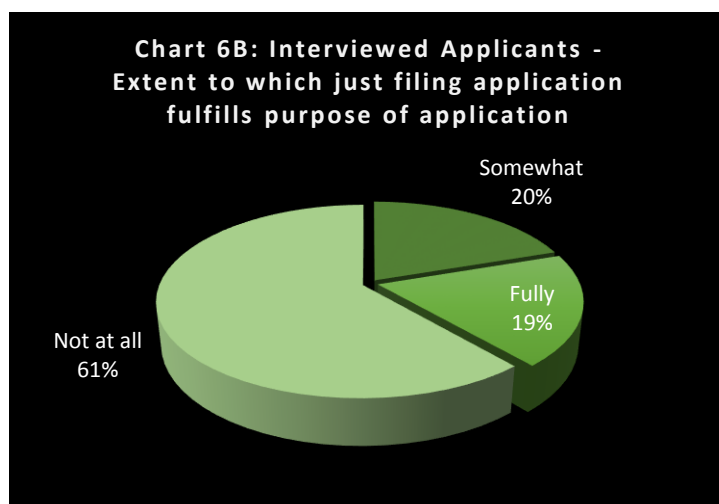


One advantage of interviewing actual applicants was that you could collect information from them that could not be gleaned just by analysing RTI applications or seeking statistics from public authorities. Consequently, we asked each of the applicants about how useful had it been to file an application under the RTI Act.

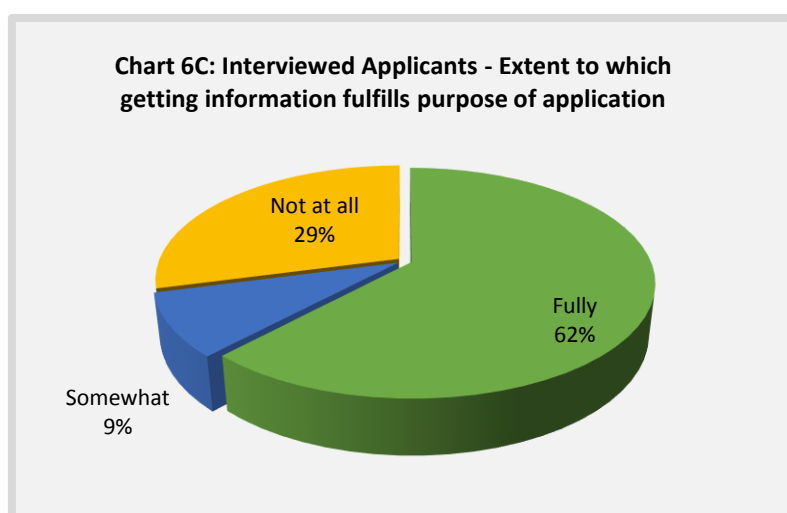
⁵⁷ In many cases the data from only the urban applicants is used and the one from the rural applicants is ignored. This is mainly because there were only 12 rural applicants interviewed and in many cases the question asked to them was different from the one asked to the urban applicant. Therefore, it is not correct to integrate the data with the urban applicants data, and not significant in terms of numbers to quote on its own.

Earlier studies had shown that at least in some cases just the mere act of filing an RTI application could solve the problem for which information was being sought. Interestingly, even this time round there were many applicants who had similar experiences. 19% of the applicants interviewed stated that just filing the RTI application, prior to or in the absence of any access to information, resulted in the resolution of the issue or problem that they were seeking to

solve by asking for the information. Another 20% of the applicants stated that the mere filing of an RTI application by them had somewhat resolved the issue at hand (Chart 6B).



The applicants were also asked whether the access to information, when it actually materialised, fulfilled the purpose for which the RTI application was filed. 62% of the applicants thought that receipt of the requested information had fully served the purpose for which the application was filed. Another 9% felt that the purpose was somewhat served. Unfortunately, a very high 29%, even after receiving the information that they had asked for, regretted that it had not served the purpose that they had hoped it would serve (Chart 6C).



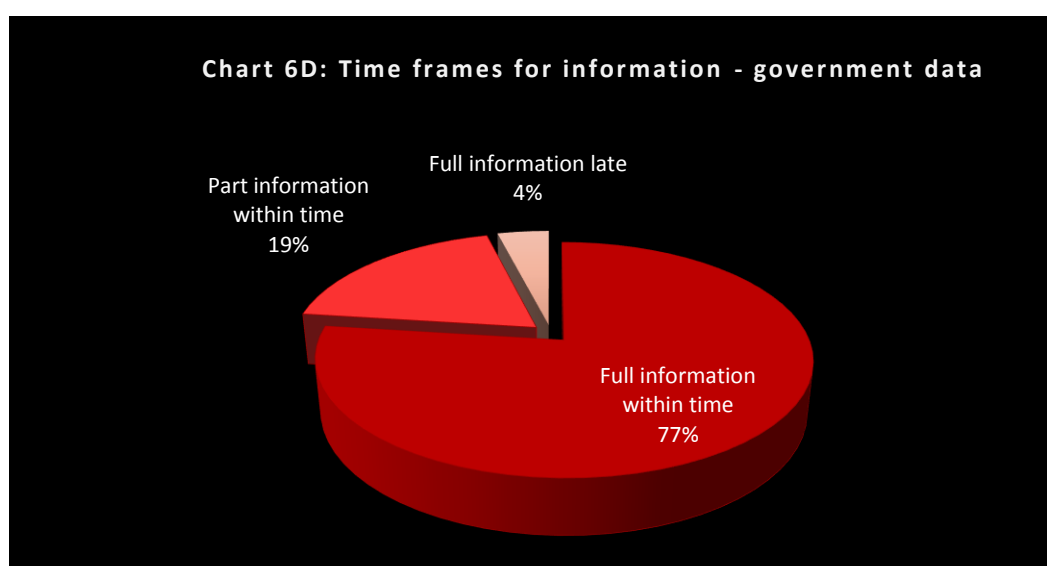
[Success rates claimed by the government](#)

According to the information received from PIOs regarding the earlier mentioned 85,000 odd applications, they claimed that full information was furnished for 77%⁵⁸ (76% for 2011-12 and 77% for 2012-13) of the applications received, and part information for 7% (see Table 6.1). 2% were not responded to and 1% were fully denied. The remaining were forwarded to another PA. By giving one point for full information provided and half a point for part information provided, for the country as a whole, public authorities claimed a success rate of 81%.

⁵⁸ All percentages are rounded off. 0 = less than 0.5.

Table 6.1: DISPOSAL OF RTI APPLICATIONS – GOVERNMENT STATISTICS										
	Applications Not Responded to	Applications Fully Rejected	Full Information Provided	Part Information Provided	Forwarded to another PA	Applications Not Responded to	Applications Fully Rejected	Full Information Provided	Part Information Provided	Forwarded to another PA
	2011-12					2012-13				
CEN	3%	0%	83%	5%	9%	5%	0%	81%	3%	11%
AP	1%	3%	54%	20%	23%	1%	2%	54%	19%	24%
ASS	1%	2%	66%	4%	27%	1%	5%	64%	5%	25%
BIH	4%	0%	90%	0%	7%	2%	0%	97%	0%	1%
DEL	0%	1%	93%	2%	5%	0%	1%	93%	2%	4%
RAJ	0%	0%	68%	13%	19%	1%	0%	71%	12%	16%
AVERAGE	2%	1%	76%	7%	15%	2%	1%	77%	7%	14%

According to government data, and giving one point for full information and half for part, 87% of the information asked was provided in time (Chart 6D)⁵⁹.

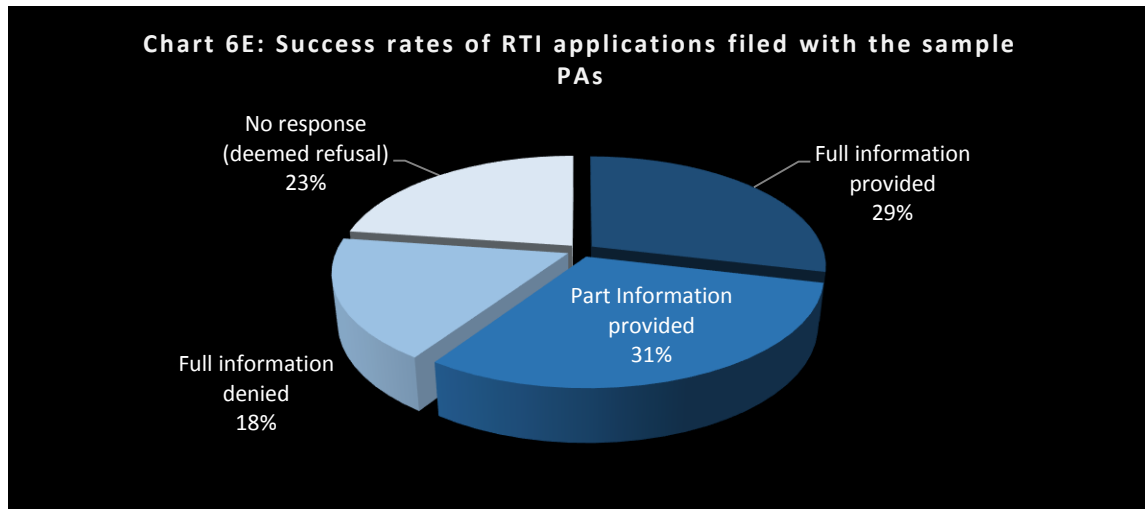


[Our experience with the RTI Applications filed with a sample of public authorities](#)

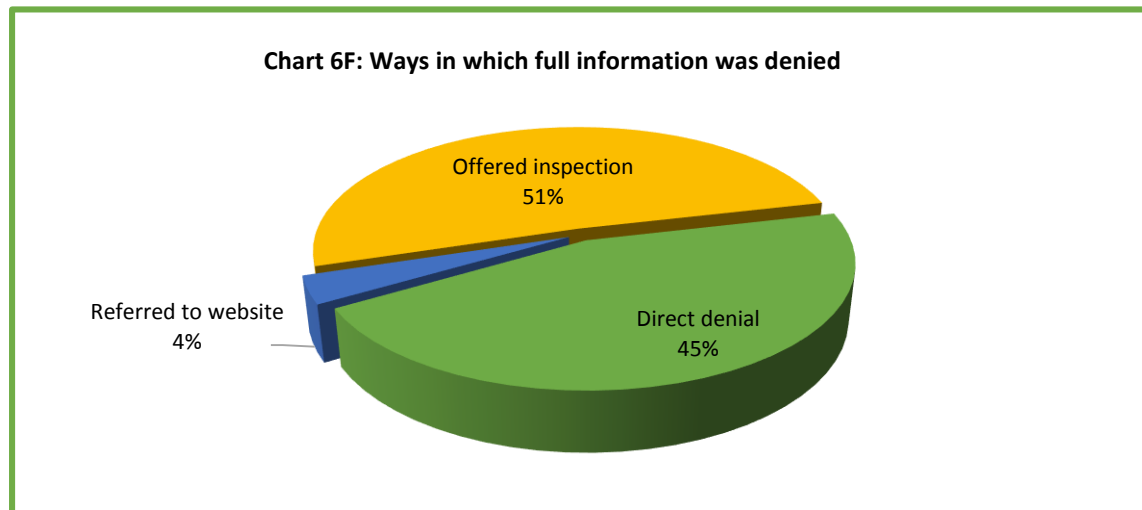
Full information was received for 29% of the 462 applications dealt with. For another 31%, part information was received. Therefore, giving one point for full information and half a point for part information, the success rate from PAs in the sample was 45% (see Chart 6E). Information was finally denied for 18% of the RTI applications (despite appeals). In 23% of the cases the PA did not respond

⁵⁹ Note for all Charts in this chapter: As the percentages have been rounded off, they might not total to a hundred

to the RTI application, in many cases even after a first appeal, and therefore this was legally classified as deemed refusal.

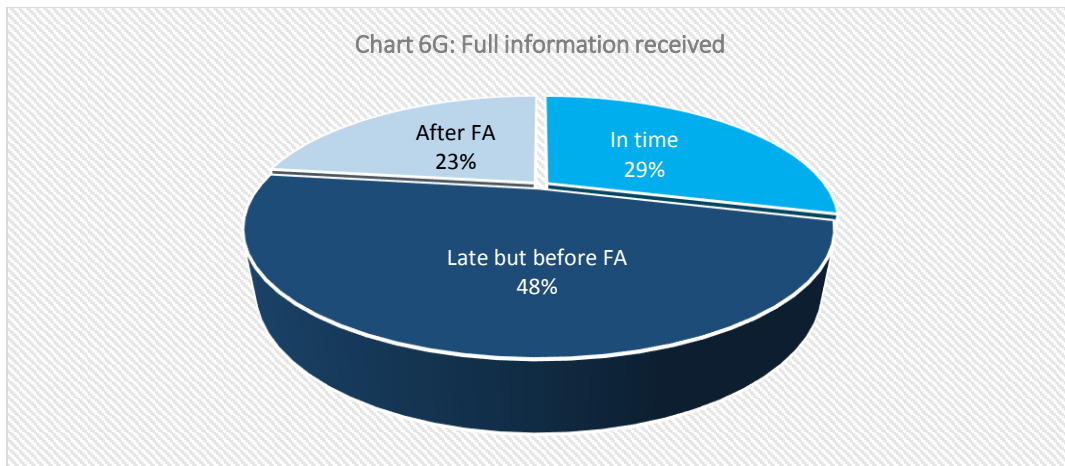


Of the 18% denials, in 45% of the cases the PIO refused to provide any of the asked for information, thereby directly and explicitly denying the request. In 51% of the cases the PIO refused to provide the asked for information but invited the applicant to inspect the records, an option that the PIO legally does not have the discretion to exercise, especially as many of the applications were sent to PAs and PIOs in far off places. In a few cases (4%) the PIO refused to send the asked for information and referred us to a website where it was claimed that the required information was available. This is again an option that is not the PIO's to exercise. Therefore all these were classified as refusals (Chart 6F).

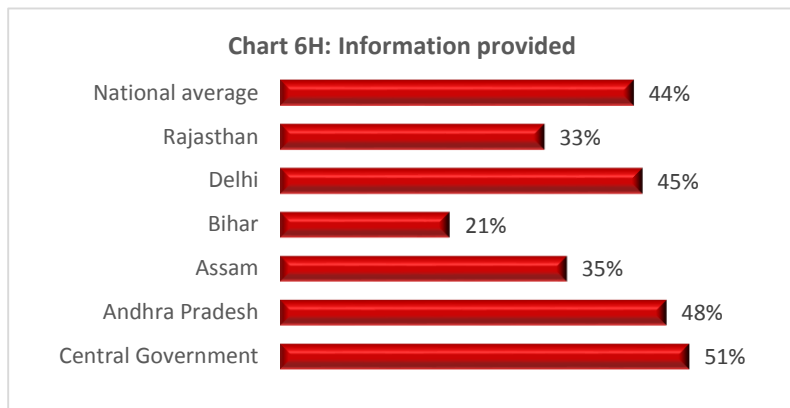


In 29% of the cases where information was provided, it was provided in time, and in the remaining 71% of the cases it was provided after the prescribed time limit, sometimes before a first appeal and sometimes after it (Chart 6G).

23% of the PAs providing part information provided it in time. Another 61% provided it late, yet before a first appeal was filed. 23% supplied part information after a first appeal was filed. Of these, in 7% of the cases the information was provided in two instalments, each falling under a different time span.

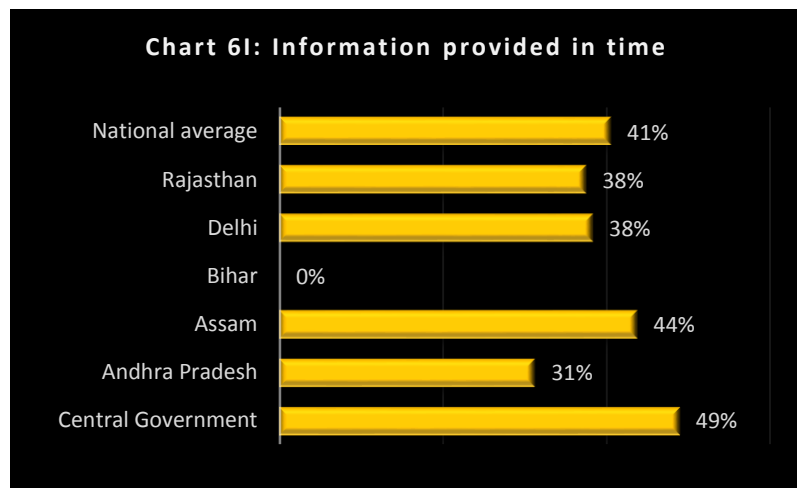


Looking at the performance of the different states and the Central Government, there was great variation between the best and the worst. Overall, the Central Government public authorities provided 51% of the information asked for, followed closely by Andhra Pradesh with 48%, Delhi with 45%, Assam with 35%, Rajasthan with 33%, the end being brought up by Bihar with 21% (Chart 6H).



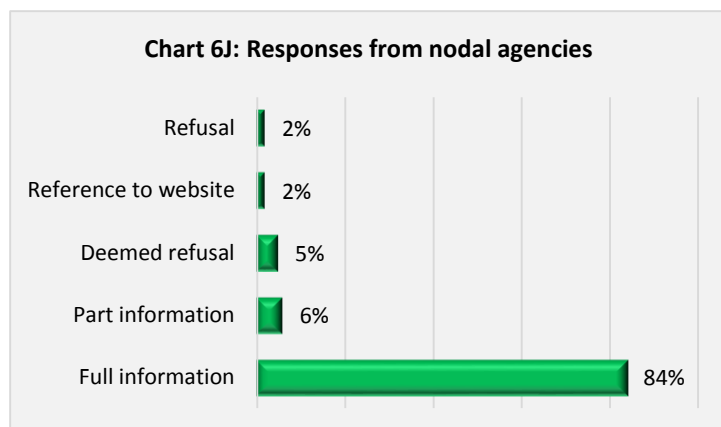
Similarly, the state-wise analysis of the proportion of information provided in time suggests that the Central Government leads with 49% followed by Assam with 44%, Rajasthan and Delhi both with 38%, Andhra Pradesh at 31%, and Bihar yet to open its account. The national average is at an abysmal 41% showing that there is less than a 50-50 chance that an applicant would get the asked for information within time (Chart 6I).

Of the 462 RTI applications filed with sample PAs, information was got, in part or whole, for just 273. The average time taken to get information was 61 days, against the 30 day limit mandated by the law.



[Our experience with RTI applications filed with nodal departments](#)

Fortunately, RTI nodal departments in the states and union territories⁶⁰ were much more conscientious at responding to RTI applications. Considering these departments are supposed to monitor and facilitate the implementation of the RTI Act in their states and territories, this was an encouraging sign.



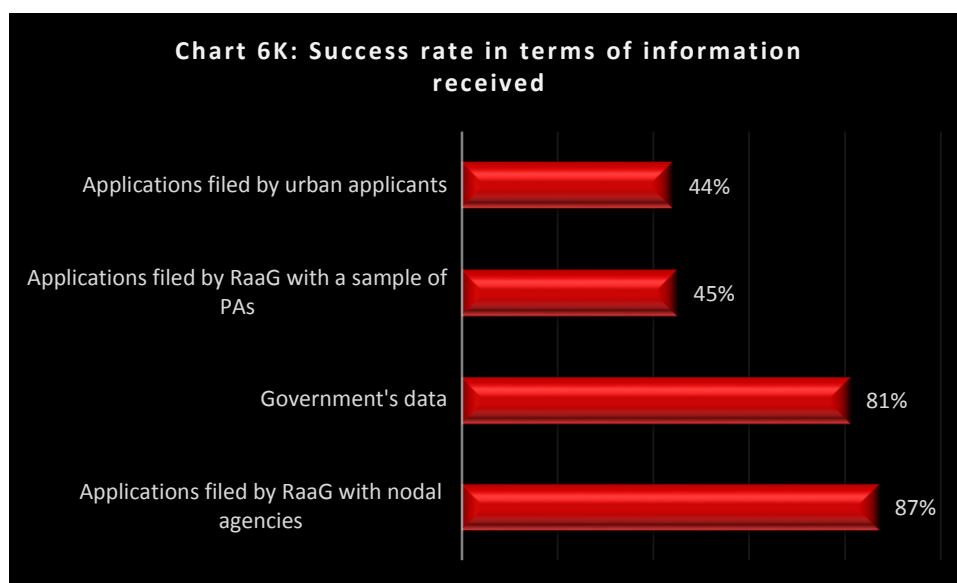
For 84% of the RTI applications filed, full information was received, for 6% of the applications only part information was received, 2% attracted an explicit denial, 2% referred to a website, and 5% did not

respond.⁶¹ Giving half a point for part information, success rate for applications filed with the nodal agency can be pegged at 87% (chart 6J).

Where full information was provided, 44% was provided in time, 20% late but before filing first appeals, and 36% after first appeal. Including part information received in time, a little over 50% of the information asked for was received in time.

[Comparison](#)

If we put all these four sets of findings about success rates together, the picture that emerges is something like this (Chart 6K).



Admittedly, the four different data sets reported in chart 6K were not derived using an identical methodology, therefore are not fully comparable. For details of the different methodologies used, please see chapter 2.

⁶⁰ For more details on nodal departments, see chapter 10.

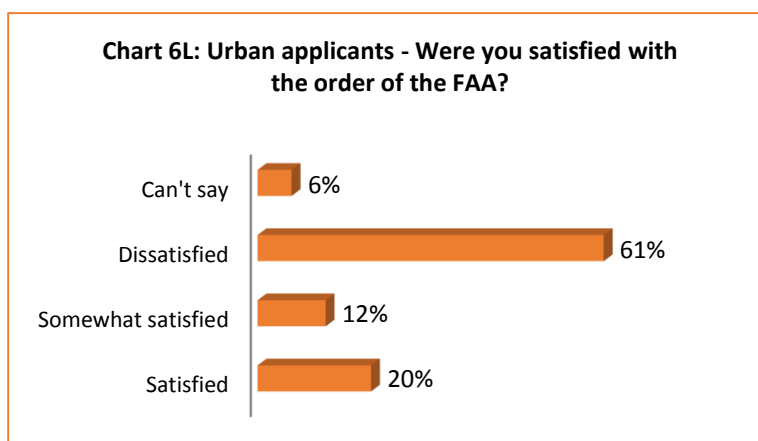
⁶¹ Note for Charts 6E – 6J: As the percentages have been rounded off, they do not total to a hundred.

6.3.2 How useful is it to file a first appeal?

The RTI Act provides for a first appeal to be filed with an officer superior to the PIO within the same public authority. The first appeal has to be filed within 30 days of either receiving a response from the PIO, or from the last day that the response should have been received, in case there was no response. The first appellate is given 45 days to respond to the first appeal.

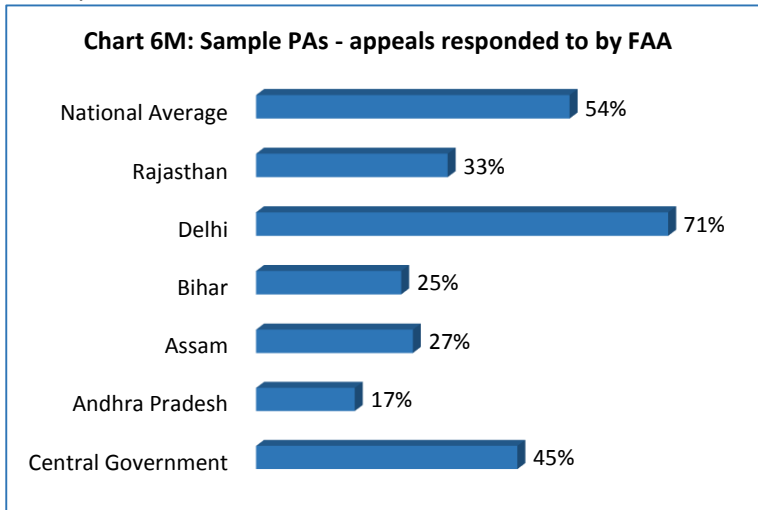
Urban applicants

Over half of the 180 urban applicants interviewed had filed first appeals. Less than half (46%) received a response to their appeal. Of those who received a response, 61% were dissatisfied with the response, 12% somewhat satisfied, and only 20% were satisfied (Chart 6L).⁶² If we give one point for satisfied and half a point for somewhat satisfied, then the success rate would be 26%.



Sample public authorities

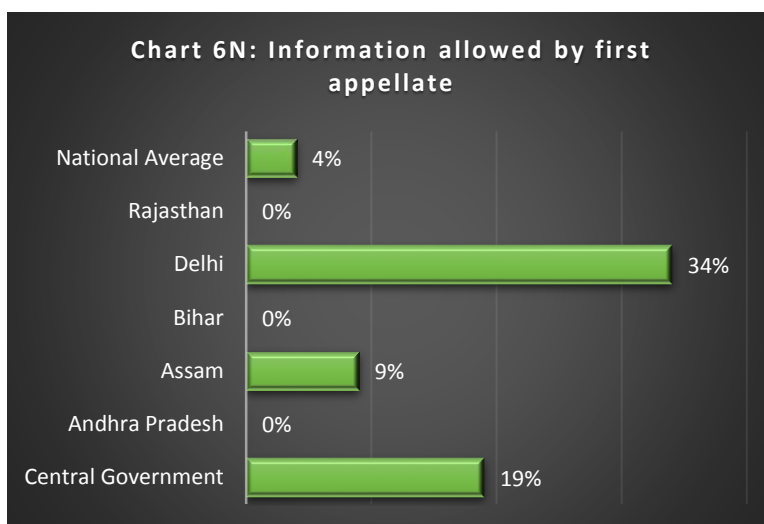
One advantage of our own database was that we already knew what information had been asked for and were certain that none of it was exempt. Therefore, for the first time we could demonstrate both the extent to which legitimate applications were rejected, as well as the variety of approaches being adopted by different states, and within a state by different public authorities, and sometime within a public authority by the different PIOs, to reject applications. Our experience was that in 46% of the 214 first appeals we filed, there was no response from the first appellate.



The first appellate authorities of Delhi performed the best in terms of responding to first appeals, with 71% of the first appeals being responded to. The Central Government was a distant second with 45%, followed by Rajasthan with 33%, Assam with 27%, Bihar with 25%, and Andhra Pradesh coming last with 17%. Overall, only 54% of the first appeals got a response (Chart 6M).

⁶² Note for Chart 6L: As the percentages have been rounded off, they do not total to a hundred.

In terms of information allowed, Andhra Pradesh, Bihar and Rajasthan first appellate authorities rejected fully all the appeals and allowed none of the information that was sought through filing a first appeal. Delhi appellate authorities allowed 34% of the information that was appealed for, Central Government allowed 19%, and Assam allowed 9%, applying the usual formula of a point for full information and half a point for part information.



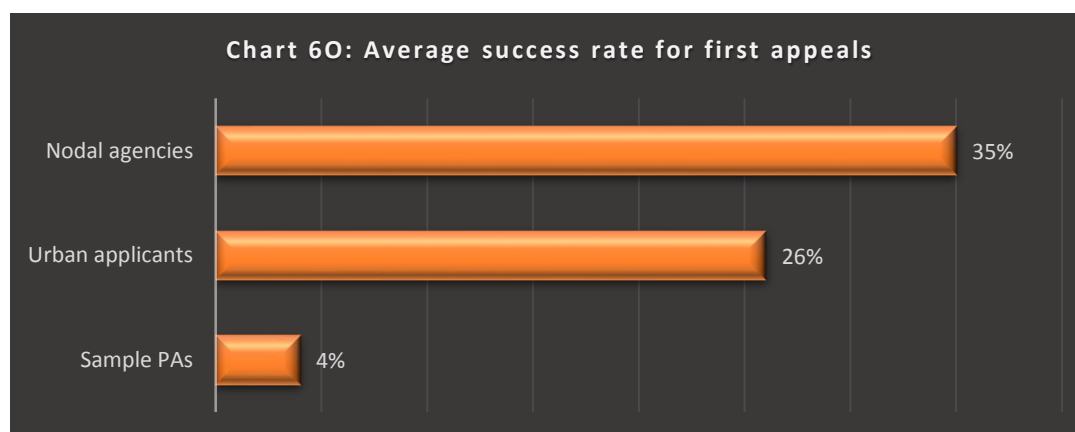
On an aggregate, 4% of the information was allowed. However, barring the Central Government and Delhi, it was unlikely that even 4% of the information sought through a first appeal would be allowed, much of it either not being responded to or being disallowed (Chart 6N).

Nodal Agencies

Even for the first appeals filed with nodal agencies, who seemed better than all the other public authorities as far as responding to RTI applications went, only 50% of the FAs elicited a response and only 35% of the information being sought, was allowed.

Comparison

If we compare the success rates for first appeals from all three different sources, the final outcome looks like this:



6.4 Discussion

6.4.1 Differences between different datasets

A great challenge is to explain the huge discrepancies that emerge between our experience as an applicant and the claims made by the government in response to our request for their statistics. For example, 130 public authorities across our sample states and the Government of India reported that they had collectively responded to 81% of the RTI applications received by them. However, the experience of the applicants and our own experience suggested that only about half the number were

responded to appropriately. This is a discrepancy that has occurred in earlier studies also and there could be many reasons for it.

For one, many public authorities seem to be considering a response that, instead of providing the required information and documents, either invites the applicant to inspect the relevant files or refers her to a website. There are reasons to believe that such responses are being classified by public authorities as complete and appropriate responses to RTI applications that neither asked for inspection nor for the website. We, on the other hand, consider these to be refusals as the law does not give the PIO an option of not sending the asked for information and requiring the applicant, who might be short of time or money, to come and seek out information herself.

The very high level response from nodal agencies (87%) is heartening, and needs to be acknowledged. However, it is not unfortunately indicative of the rest of the government.

6.4.2 Inspection

There is no provision under the law that authorises the PIO to opt for offering inspection where specific information is asked for.

The only conceivable provision of the RTI Act that could be invoked here would be section 7 (9) which provides some relief to the public authority in cases where the information asked for is not available in the form asked for, and compiling it in that form would disproportionately divert the resources of the public authority. However, this subsection could not be invoked for any of the applications submitted by us as we either asked for documents or for information that in any case needed to be compiled by each public authority under section 25 of the RTI Act.

In any case, many of the public authorities were located in towns and cities far from Delhi and it was impractical for the PIOs to suggest that applicants travel thousands of kilometres just to inspect a document to which they have a legal right to get a copy under the RTI Act.

6.4.3 Website

Similarly, the law does not permit the PIO to choose between sending the required information and referring the applicant to a website. The PIO can neither assume that the applicant has the access and skill required to download the information from a website, nor can the PIO decide in what manner to give information except where she can establish that providing it in the form asked for would divert disproportionately the resources of the public authority. However, our experience has been that PIOs are increasingly taking the easy route of inviting applicants to inspect or to access websites without meeting the stringent conditions laid down in section 7 (9) of the RTI Act.

This again goes beyond the law, as there is no provision of the RTI Act which says that information put up on the website, or for that matter proactively put out in some other form, can be denied by the public authority if asked for in an application. This is particularly so because a large proportion of the population in India does not have access to the web and might not have access to the other modes of proactive disclosure, for example the information put up on a board that needs to be accessed by someone living in a far-off town or village.

The legally correct approach would have been to indicate to the applicant that the required information was available on the web, give the address of the website, and also offer to provide copies

of it on payment of the prescribed fee. It was then open to the applicant to either directly access it or pay the public authority for copies.

Interestingly, very often the websites quoted by the PIO in response to an RTI application either do not open or do not contain the information asked for. However, such responses seem to get entered into official statistics as full responses.

6.4.4 Diversity of interpretations

Like the earlier RaaG *People's RTI Assessment* of 2008-09, this assessment also used the RTI Act to access information on how the RTI Act was being implemented. It was fascinating to see how an identical application, which went to 150 PIOs, and was finally transferred to and dealt with by 462 PIOs, was treated in such a variety of ways, with all the asked for information being provided without hesitation by one set of PIOs and, at the other extreme, all the information asked for being denied even by the first appellate authority. Equally interesting was the fact that though the information asked for from all the PIOs was identical, it was denied by different PIOs for different reasons. By the end of it, almost all the different exemptions in the RTI Act, and some that were not even in the Act, had been quoted by some PIO or the other to deny us information! Clearly there is no uniformity in the understanding and the application of the RTI Act.

Nevertheless, this discrepancy between official statistics and our experience cannot be definitively resolved till an analysis has been done looking at both the application and the response sent by the department. As we have requested for and received a large number of responses we hope that in the near future we can complete such an analysis.

6.4.5 First appeals

Unfortunately, the RTI Act is somewhat weak as far as the first appellate goes and, apart from specifying that the PIO should invariably list in all replies the name and address of the FAA (something that most PIOs do not do), does not go on to prescribe any penalties for the first appellate if she does not respond to the appeal, or does not respond in time. Perhaps this is the reason why there is such a low response rate from the first appellate.

It must, however, be kept in mind that many applicants have exaggerated and unrealistic expectations from the RTI Act. In some cases, rather than seeking information that might help resolve a problem, there seemed to be an expectation that just the filing of an RTI application should be enough to resolve it. Sometimes these expectations are met, because the very filing of an application alerts the concerned officials to the possibility of the matter becoming public, as has been experienced by a significant proportion of our urban applicants. On other occasions the RTI process brings matters to the notice of higher officials who might not have been aware of the problem. However, this is not usually the case and therefore the impact of the RTI Act should not be measured with such romantic standards.

Nevertheless, the real test for the efficacy (and even the desirability) of the RTI regime is its ability to finally make a difference.

There was on an aggregate less than 4% chance of getting information from a first appeal, even when the information asked for, as was the case with our RTI applications, was not exempt under the RTI Act. This raises the question of whether it is worth insisting on a first appeal before a second appeal is

entertained, given the huge delays involved. The first appeal process invariably adds 45 days to the appellate process, apart from the extra effort and therefore it is critical that the first appellate authorities be made accountable, perhaps by subjecting them to penalties for wrongful denials.

7. PUBLIC AUTHORITIES

- ***In 65% of the PA premises inspected, no board displaying details of the PIO, fee, timings etc. could be found.***
- ***In 59% of the PA premises inspected, no records detailing the categories of information listed under section 4 were available for inspection***
- ***23% of PA websites analysed did not have a link to section 4 disclosures***
- ***10% of PA websites analysed did not provide information on the name of the PIO of the PA***

7.1 Introduction

The RTI Act gives citizens the right to access information held by public authorities. The Act requires PAs to set up a practical regime to provide information to the public. Some legally specified types of information have to be disclosed proactively and other non-exempt categories of information have to be supplied in response to an RTI application. Under section 2(f) of the RTI Act, people can also seek *“information relating to any private body which can be accessed by a public authority under any other law for the time being in force”*.

Public authorities, therefore not only have to provide information held by them but also become gateways for citizens’ to access information from private bodies.

This chapter discusses the performance of public authorities in terms of their obligation to proactively disclose information to people and assesses their preparedness in terms of record keeping and management.

Section 4 of the RTI Act lists various categories of information which should proactively or *suo motu* be available to the public and should not require the filing of any RTI application. It also prescribes the manner in which the information should be proactively provided. In many senses this is perhaps the most important part of the RTI legislation, and certainly seems to reflect the future direction that the transparency regime in India must take. In fact, the Act itself also recognizes this and section 4(2) exhorts the PAs 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”*.

Section 4(1) of the RTI Act lists the particulars of information which were to be published within 120 days of the enactment of the RTI Act and subsequently updated every year, by each public authority. Section 4(1) (a) obligates public authorities to improve record maintenance to facilitate disclosure and

Box 7.1: To be or not to be a Public Authority

In 2013 the CIC gave a landmark order stipulating that some of the national political parties (like the Congress, the BJP, the CPM and the CPI) were public authorities and came under the purview of the RTI Act. Unhappy at the prospect of having to disclose information to people, the parties moved an amendment in Parliament to exempt themselves from the jurisdiction of the RTI Act. Responding to huge public pressure, the amendment bill was allowed to lapse. However, till date none of the parties have appointed a PIO or started disclosing information proactively, an obligation for PAs under the RTI Act.

Box 7.2: Exempt from transparency

Section 24 exempts intelligence and security organisations from the jurisdiction of the RTI Act, requiring them to only disclose information pertaining to allegations of corruption and human rights violations.

However, this section has often been arbitrarily used by the government to exempt bodies like the Central Bureau of Investigation (CBI) which are in fact not **intelligence** or **security** organisations.

to work towards computerizing records to assist access to information. The particulars of information to be disclosed proactively are listed under section 4(1)(b) and include information about the functions of the public authority, duties of its officers, procedure for decision-making, documents held by it, norms/rules prescribed for its functioning, arrangements for public consultation, details about advisory committees, directory of officers, budget allocated to the authority, details of subsidy programs executed, list of beneficiaries, salaries of employees, facilities available for citizens to access information and contact details of the PIOs. Section 4(1)(c) and (d) require public authorities to proactively disclose relevant facts while formulating policies and also provide reasons for their decisions.

Section 4(3) states that *"...every information shall be disseminated widely and in such form and manner which is easily accessible to the public"*, while section 4(4) states that *"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..."*

Section 4 prescribes that information should be disclosed through the internet and also, through non-electronic means of communication like boards, public announcements, inspection of offices etc., in the local language, keeping in mind the reality of India, where less than 13% of the population has access to the internet⁶³. In fact, the word "disseminated", is explained in the Act to mean *"...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."*

Therefore, section 4 details the categories of information that have to be provided proactively and also the methods of communication for disseminating the information. This is an area in where advances in modern technology, especially the ability to digitize data, to upload it on websites and to access it through personal computers and through cell phones, has opened up a new range of possibilities, albeit for a smaller section of the population.

Further, there are many advantages to an increasing amount of information being made available proactively. It should lessen the number of RTI applications PAs have to deal with, as people will be able to have most of their more general questions answered without having to file an application. There is also a tendency to believe that agencies that are willing to put more information in the public domain without being asked, must have less to hide.

For the public, it saves them the time, the cost and the bother of filing and pursuing applications. It also gives a certain permanence to the information, for once it is put into the public domain it cannot be easily changed at a later date. Most significantly, in an environment where even asking for information can be a dangerous enterprise for the common citizen (especially for the poor and the disempowered), being able to access the required data without having to specifically ask for it provides great protection.

Where the information being asked for potentially challenges powerful vested interests, applicants are often threatened and browbeaten into not pursuing their applications. This may happen at the

⁶³ Percentage of Individuals using the Internet 2000-2012", International Telecommunications Union (Geneva), June 2013

stage of trying to file an RTI application, following up on the application, or using information obtained through the RTI to prevent or expose corruption or other wrong doing. Intimidation in some cases even takes the form of physical harassment and attacks on information seekers, especially when people file complaints about corruption against powerful individuals or functionaries. In some cases, people have even been killed for accessing information and exposing corruption and wrong-doing⁶⁴ (see box 7.3).

Recognizing that section 4 of the RTI Act was not being properly implemented, in 2011 the government constituted a taskforce for its effective implementation⁶⁵. Based on the report of the taskforce, the Department of Personnel and Training (DoPT), issued guidelines in April 2013 for public authorities prescribing: additional information for proactive disclosures, guidelines for digital publication, guidelines for several sub-sections of section 4 to make them more effective and also a framework for monitoring compliance with section 4. In a second tranche of recommendations, the DoPT detailed guidelines for disclosure by state governments along with templates for disclosure at various levels. The guidelines included illustrative templates for disclosure of information related to the Public Distribution System (PDS), *Panchayats*, MGNREGA and primary & secondary schools.

Box 7.3: Protecting information seekers

The concern about intimidation of information seekers spurred debate among civil society groups working on transparency on how best to protect those using the RTI Act. One stream of thought was to advocate for police protection for those facing threats/intimidation as a result of seeking information. However, given that providing protection to a large number of people for an infinite amount of time would be administratively an impossible task, a more creative solution was advocated by groups, that wherever a person is threatened/intimidated, the information being sought by the person should immediately be put out proactively. This would have a deterrent effect as any attack/threat would only hasten the disclosure of information which vested interests were trying to suppress. Taking note of the attacks and suggestions from groups, the Central Information Commission passed a resolution on 13.9.2011 in which it resolved, *“that if it receives a complaint regarding assault or murder of an information seeker, it will examine the pending RTI applications of the victim and order the concerned Department(s) to publish the requested information suo motu on their website as per the provisions of law.”* However, there is no information available on whether the resolution is being implemented by the Commission.

In a country the size of India, universal proactive disclosures can be the only way forward, for if a billion plus Indians were forced to file RTI applications each month in order to ensure access to even their most fundamental rights, then the whole system would sooner or later collapse. The only way transparency can work progressively over the medium to long term is if the certainty that all information will become public becomes a deterrent for apathy, inefficiency, laziness and wrongdoing in governance.

⁶⁴ <http://archive.indianexpress.com/news/the-responsibility-to-protect/1111862/>

⁶⁵ http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_6_2011-IR-21112013.pdf and http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/Suo_moto_disclosure-15042013.pdf

7.2 Methodology

To audit compliance with section 4 of the RTI Act, a ‘physical’ inspection of the offices of the public authorities and an ‘electronic’ audit of their websites were undertaken to ensure that the main routes through which information should and could be disseminated were studied.

In the physical audit, we inspected the premises of the 69 public authorities⁶⁶ to check for section 4 disclosures on boards (including painting on walls) or through publications available for public inspection in the offices of public authorities. Though the study covers a sample of 70 PAs, the physical audits were only carried out in 69 PAs, as the survey team was not allowed to enter the premises of the Police HQ in Patna, Bihar.

Section 4 lists notice boards and records available for inspection as some of the forms of disclosure which are required to be physically available at the premises. While the public authority has the discretion to pick the most suitable form of disclosure, we decided to audit two forms of disclosures. First, whether a board displaying the name and contact details of the PIO, the quantum of fee and mode of payment and the timings for submission of fee, was available on the premises.⁶⁷ This information would give people visiting the PA premises access to the basic information required to engage with the process of using the RTI Act. Second, the survey teams checked whether the

Table 7.1: List of state PAs which were audited P: only a physical audit of the PA premises was undertaken; W: only the website of the PA was audited; W-P: both website and PA premises were audited.								
State	Headquarters/ District	Police	Revenue	Rural Development	Women & Child Development	Dept. of Health and Family Welfare	Public Health Engineering Dept.	Delhi Urban Shelter Improvement Board
Andhra Pradesh	Headquarters	W-P	W-P	W-P	W-P			
	Anantapur	P	P	P	P			
	Visakhapatnam	P	P	P	P			
Assam	Headquarters	W-P	W-P	W-P		W-P		
	Nalbari	P	P	P		P		
	Jorhat	P	P	P		P		
Bihar	Headquarters	W	W-P	W-P	W-P			
	Gopalganj	P	P	P	P			
	Purnea	P	P	P	P			
Rajasthan	Headquarters	W-P	W-P	W-P			W-P	
	Dungarpur	P	P	P			P	
	Karauli	P	P	P			P	
Delhi	Headquarters	W-P	W-P		W-P			W-P
	East	P	P		P			P
	North West	P	P		P			P

categories of information specified in section 4(1) of the RTI Act were proactively disclosed by way of a publication available for inspection on the premises. As it would be impractical to publish all the particulars of information specified under section 4(1) on a board, we asked to inspect documents where such information was available. The DoPT vide its guidelines issued in November 2013 prescribed making available documents for inspection as a key means of disclosing information under section 4.

Physical audits were undertaken at the office premises of PAs in the state headquarters and also in the

⁶⁶ The premises of the Police headquarter in Patna, Bihar could not be inspected as the team was denied permission to enter the premises

⁶⁷ See I2 and I4 of PA premises inspection, annexure 3 on <http://www.rti-assessment.com/annexures.html>

sample districts. The office premises of the 10 sample Central Government PAs were also inspected to check compliance with section 4.

In the electronic audit, we checked the official website of 30 public authorities to verify whether information about the particulars listed in section 4 was accessible on the internet. Electronic audits were undertaken for the four PAs chosen in the five sample states and also the 10 sample Central Government PAs. As each PA had only one official website, no electronic audit of the PAs at the district level could be undertaken. Table 7.1 provides the details of PAs in states that were audited as part of the assessment. In addition, physical and electronic audits were done for the following PAs of the Central Government:

1. Ministry of Finance
2. Northern Railways
3. Ministry of Culture
4. Ministry of Social Justice
5. Ministry of Communication & IT
6. Ministry of External Affairs
7. Ministry of Rural Development
8. Ministry of Environment & Forests
9. Ministry of Home Affairs
10. Ministry of Personnel & Grievances

Record keeping and management was assessed in three different ways. First, PIOs were asked in interviews if they/their department kept consolidated information on records of RTI applications received, dates when information was sent, number of applications where information was provided, number of applications rejected and the reasons thereof.⁶⁸ Second, during the interview, PIOs were asked to provide factual information on the number of RTI applications received by them, year-wise, based on the PA's record. Third, RTI applications⁶⁹ were sent to PAs, asking them to provide information on the number of RTI applications received in 2011-12 and 2012-13, number responded to partially or fully, number rejected and whether information was provided within the stipulated time frame.

7.3 Findings

7.3.1 Are pro-active disclosure requirements complied with in PA premises?

The findings discussed in this section relate to the result of the inspection of 69 office premises of PAs.

Availability of proactive disclosure of details of PIO, fee, timings etc., through boards

In 65% of the PA premises surveyed, no boards with details of the PIO, quantum of fee, timings for filing RTI applications etc., could be found.

Andhra Pradesh was the best performer by a big margin, where our teams were able to locate boards in 92% of the PAs surveyed. In Rajasthan, boards existed in 50% of the inspected premises. PAs in Bihar and the Central Government, were the worst performers where boards were found only in 9% and 10% of the PA offices, respectively (Chart 7A). Further, at the offices of the Central Government

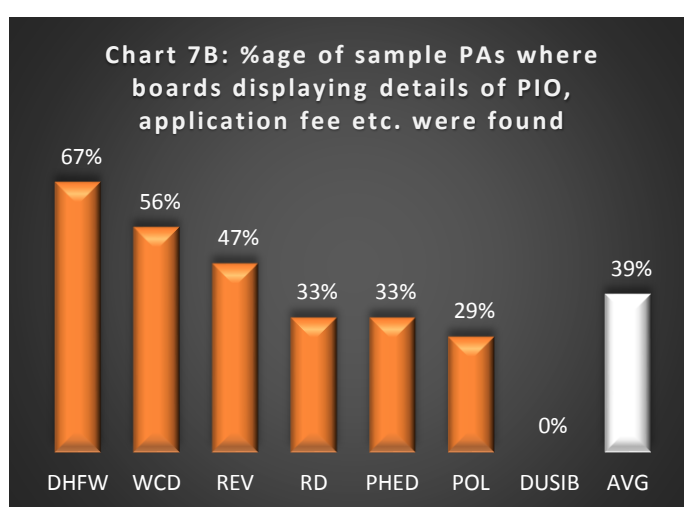
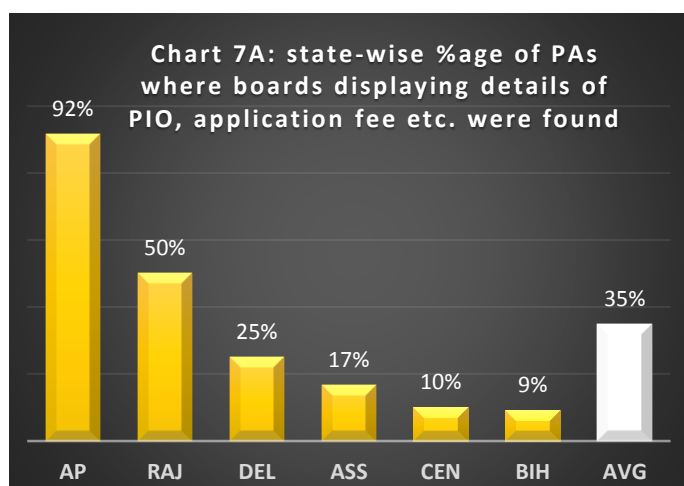
⁶⁸ See Q 23 of PIO questionnaire, annexure 4 on <http://www.rti-assessment.com/annexures.html>

⁶⁹ See RTI 'application 1' filed to PAs on <http://www.rti-assessment.com/annexures.html>

PAs, the teams faced a unique problem as they were not allowed entry into the premises. When our teams stated that they wanted to file RTI applications, they were directed to a separate counter set up for the purpose of accepting RTI applications and correspondence. The teams inspected this location, to see how much information about the RTI Act was provided to people who tried to file RTI applications at these offices.

In terms of PA-wise performance, Department of Health and Family Welfare (DHFV) in Assam was found to be the leader, displaying the boards in 67% of their premises, followed by Department of Women and Child Development (WCD) at 56%. In the Department of Rural Development (RD) and the Public Health Engineering Department (PHED), we could locate boards in 33% of the inspected premises while in the office premises of the Police (POL), the boards were found in 29%. In the Delhi Urban Shelter Improvement Board (DUSIB), none of the premises inspected displayed this information (Chart 7B).

In terms of PAs of the Central Government, the board displaying details of PIO, application fee etc. could only be found at the premises of the Ministry of Rural Development. The board could not be found at the premises of the DoPT, which in fact is the nodal agency for the implementation of the national RTI Act.



Quality of proactive disclosure of details of PIO, fee, timings etc., through boards

The boards were checked to see if the following information was displayed:

1. Name of PIO
2. Telephone number of PIO
3. Precise information on location of PIO
4. Timings for submission of RTI applications
5. Timings for submission of fee
6. Quantum of fee, specifying different heads
7. Modes of payment
8. Precise information on location of cashier

Of the PA premises where boards were found, only the board at the premises of the Rural Development Department in Visakhapatnam, Andhra Pradesh, displayed all the particulars of information. In Bihar, the sole board found in the PA premises displayed only the name of the PIO. Boards in Delhi and Assam displayed partial information on the boards, primarily displaying only the name, phone number, and location of the PIO (see Table 7.2).

Table 7.2: %age of PAs displaying particulars of information									
	Name of PIO	Tel no. of PIO	Location of PIO	Timings of submission of RTI	Timings of submission of fee	Quantum of fee	Modes of payment	Location of cashier	Average performance score ⁷⁰
AP	83%	83%	8%	8%	17%	17%	17%	18%	31%
ASS	17%	8%	17%	0%	0%	0%	0%	0%	5%
BIH	9%	0%	0%	0%	0%	0%	0%	0%	1%
CEN	10%	10%	10%	0%	0%	0%	0%	0%	4%
DEL	17%	25%	0%	0%	0%	0%	0%	0%	5%
RAJ	33%	33%	17%	8%	8%	33%	33%	0%	21%
AVG	29%	28%	9%	3%	4%	9%	9%	3%	12%

Availability and quality of proactive disclosure of the categories of information mentioned in section 4(1)(b) through records open for inspection

In only 41% of the PA premises inspected, the categories of information mentioned in section 4(1)(b) were proactively available in the form of a record/publication open for inspection by the public.

There was a lot of variation among states in terms of maintenance of such records for inspection. Rajasthan was the front-runner with 92% of the PAs disclosing information in the form of records open for inspection. Delhi and Ministries of the Central Government were the worst performers with only 8% and 10% of the PAs, respectively, disclosing information through records open for inspection (Chart 7C). The teams were mostly not allowed to enter the premises of the Central Ministries.

At several places, the records were not compiled into one file, or even located in the same place, for ease of inspection.

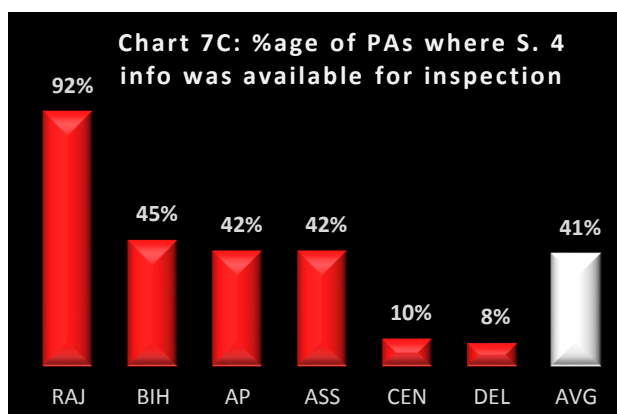


Table 7.3: %age of PAs where section 4 information was available for inspection							
Particulars of information	AP	ASS	BIH	CEN	DEL	RAJ	AVG
About the PA	42%	28%	33%	0%	0%	89%	33%
Duties of officers	42%	33%	32%	0%	0%	92%	34%
Decision-making	33%	33%	18%	0%	0%	92%	30%
Norms	38%	21%	27%	0%	0%	92%	30%
Records held	38%	38%	27%	0%	0%	83%	32%
Public consultation	25%	17%	18%	0%	0%	92%	26%
Advisory bodies	25%	25%	0%	0%	0%	58%	19%
Directory of employees	42%	42%	27%	10%	8%	83%	36%
Salaries	33%	33%	27%	0%	0%	92%	32%
Budgets	33%	33%	27%	0%	0%	83%	30%
Subsidy programmes	33%	17%	23%	0%	0%	46%	20%
Information facilities	38%	21%	14%	0%	0%	58%	22%
Average performance score (footnote 70)	35%	28%	23%	1%	1%	80%	29%

⁷⁰ Looking at the different parameters and awarding 1 mark those where information was available and 0 for those where information was not available, the average performance score was calculated.

Records were gathered from different locations within the office when the team asked to inspect documents.

There was not a single PA that proactively provided all the requisite particulars of information for public inspection (Table 7.3). PAs in Delhi and the Central Government proactively provided only the directory of employees in the form of records available for inspection. While more than 30% PAs disclosed information about the organization, duties of officers, processes of decision-making, list of records held, details about norms, budgets and salaries, only 19% of PAs were able to produce records about advisory committees for inspection.

Box 7.4- Non-implementation of section 4 cost them dearly

Nandi Singh of Assam and Shimbu Ram Bishnoi of Rajasthan paid the ultimate price for seeking information and exposing corruption.

33 year old Shimbu Ram Bishnoi of Jodhpur, Rajasthan filed RTI applications to access information on the implementation of MGNREGA and the Public Distribution System (PDS). The *Sarpanch* started threatening Bishnoi to dissuade him from pursuing the information. Records obtained by him showed large scale corruption - scores of job cards had been forged, unqualified “mates” had been appointed under MGNREGA and there were huge discrepancies in the list of beneficiaries of the PDS. Bishnoi also obtained information which showed that the *Sarpanch* did not meet the requisite qualifications to stand for elections and had 13 court cases pending against him, including attempted murder. Despite repeated threats from the *Sarpanch*, Bishnoi and his colleagues filed complaints before relevant authorities about the irregularities exposed through these records. On 7th October 2013, Bishnoi was brutally attacked with iron rods and wooden sticks allegedly by the *Sarpanch*, his two sons and three others. Bishnoi suffered grievous injuries and a broken skull and succumbed to the injuries before he could reach the hospital.

40 year old Nandi Singh of Bishnu-Tegjuri village in Dhemaji district, Assam had been relentlessly pursuing irregularities in the PDS in his village. Despite repeated threats, he accessed records of food grains received and sold by the fair price shop. Based on the information obtained, he filed a complaint on the 17th of August 2012 to the supply department in the district. On 2nd September 2012, Nandi Singh and his wife were attacked by eight people, allegedly led by the owner of the fair price shop. Singh received more than 50 axe blows and died on the way to the hospital, while his wife sustained serious injuries.

Both Bishnoi and Singh were pursuing information which should have been proactively disclosed under section 4 of the RTI Act. Had the provisions for proactive disclosures been properly implemented, they would not have had to come forward and file RTI applications, thereby being singled out for retaliation by vested interests. In fact, robust implementation of section 4 would have prevented such large-scale anomalies in the implementation of welfare schemes in the first place.



Nandi Singh



Shimbu Ram Bishnoi

Source- Public hearings held in Assam and Rajasthan as part of the study.

7.3.2 Are pro-active disclosure requirements complied with on PA websites?

Detailed results of audits of 30 official websites of the PAs are discussed below.

Proactive disclosure of basic information about the RTI Act on the websites of PAs

Of the 30 official websites analysed, 90% provided information on the name of the PIO and 83% provided the names of the FAA. Central ministries had the best disclosures in terms of providing basic information about the RTI Act. Websites of the PAs in Assam had the worst disclosures with only 50% providing information on the name of the PIO and only 25% providing the contact details of the PIO (Table 7.4).

Table 7.4: Percentage of PAs displaying basic particulars about the RTI on their website							
	Name of PIO	Contact details of PIO	Application Fee	Mode of payment of fee	Name of FAA	Contact Details of FAA	Average performance score (footnote 70)
DEL	100%	100%	0%	0%	75%	75%	58%
ASS	50%	25%	25%	0%	50%	25%	29%
RAJ	75%	50%	25%	25%	50%	50%	46%
BIH	100%	50%	25%	0%	100%	75%	58%
CEN	100%	100%	50%	50%	100%	100%	83%
AP	100%	75%	0%	0%	100%	75%	58%
AVG	90%	73%	27%	20%	83%	73%	61%

Availability and quality of proactive disclosure of the categories of information mentioned in section 4(1)(b) through the official website of the PAs

77% of the websites analysed had a link to disclosures made by the PA under section 4(1) of the RTI Act. However, on many of the websites, the links were not immediately visible and one had to click at several different links to access the disclosures (Box 7.5). Of the websites which had links, only 26% displayed information in English as well as in the local language. On some websites like DUSIB, Delhi and Revenue Department, Rajasthan, while a link was available, it was either not working or was under construction. Further, several websites were compatible with only a particular type of web browser, thus making access difficult and cumbersome.

PAs of AP and Central Government had a perfect score of 100% in terms of providing a link to their section 4 disclosures. None of the PAs of Assam provided a link to section 4 disclosures on their website (Table 7.5). While partial information was available in terms of details of the PIO for the PAs of Assam, there was no link which consolidated the various particulars of information required to be disclosed under section 4(1) of the RTI Act.

Box 7.5- The disclosure hunt!

On the website of the Rural Development Department, Rajasthan (<http://rdprd.gov.in/>), one has to first click on 'Grameen Vikas Vibhag' and then on 'Vibhageey manual' (department manuals) to access the disclosures under section 4. The words 'RTI', 'Section 4' or 'disclosures' or even 'information' are not mentioned anywhere!

Table 7.5: Number of PAs with a link to disclosures u/s 4 on their official website

	Number of websites with a link to Section 4 disclosures	Number of websites examined
DEL	3	4
ASS	0	4
RAJ	3	4
BIH	3	4
AP	4	4
CEN	10	10
TOTAL	23	30

Table 7.6 PAs displaying particulars of info under S 4 on their website

Particulars	DEL	ASS	RAJ	BIH	CEN	AP	AVG
About the PA	75%	0%	75%	75%	90%	100%	73%
Duties of officers	75%	0%	75%	75%	90%	100%	73%
Decision-making	75%	0%	75%	75%	80%	100%	70%
Norms	75%	0%	75%	75%	90%	100%	73%
Documents held	75%	0%	75%	75%	80%	100%	70%
Public consultation	50%	0%	75%	75%	90%	100%	70%
Advisory bodies	50%	0%	75%	75%	80%	100%	67%
Directory of employees	75%	0%	75%	75%	90%	100%	73%
Salaries	75%	0%	75%	75%	80%	100%	70%
Budgets	75%	0%	75%	50%	90%	75%	67%
Subsidy progs	75%	0%	75%	50%	70%	100%	63%
Information facilities	75%	0%	75%	50%	70%	100%	63%
Avg. performance score (footnote 70)	71%	0%	75%	69%	83%	98%	69%

For ease of understanding, the various particulars mentioned under section 4(1) have been clubbed together to form broad categories. In terms of the quality and completeness of disclosures, AP had the best disclosures with almost all the PAs providing information on the particulars under section 4 (Table 7.6). Assam fared the worst as none of the websites had a link to section 4 disclosures. The PAs of the Central Government also fared fairly well in terms of proactively disclosing information via the websites.

Box 7.6: Innovative means of disclosures on performance of elected representatives in Delhi

The Legislative Assembly of Delhi has adopted a mechanism to provide a live webcast of the proceedings of the Legislative Assembly whenever the Assembly is in session. While at the national level, Lok Sabha and Rajya Sabha provide a live telecast of their proceedings, Delhi Assembly is the only state legislature in the country with a functional webcast of proceedings. The live webcast has several advantages- it enables people to be informed on a real-time basis of the debates happening in the Assembly and the legislations being passed.

Details of expenditure of local area development funds allocated to MLAs and Councillors, are displayed in each constituency and municipal ward in Delhi, on a board in Hindi. This enables people to monitor the development projects sanctioned from the local area development funds of the elected representatives.

These measures were adopted by the government on the directions of the Central Information Commission, as a result of complaints filed by Satark Nagrik Sangathan.

Board displaying details of development funds

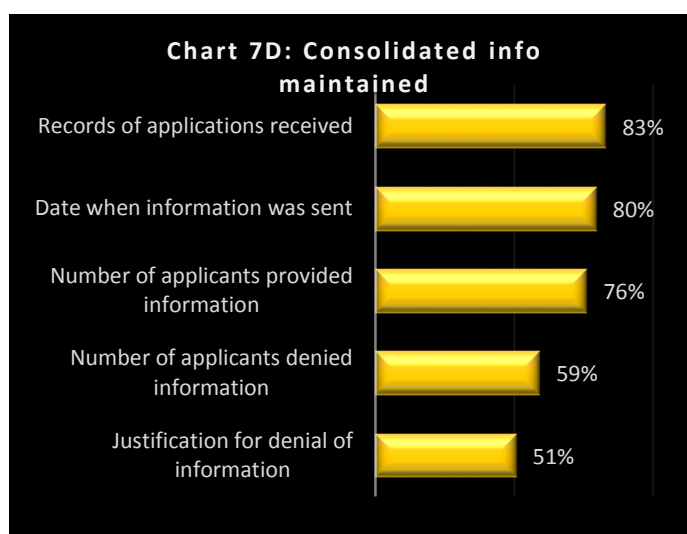


Webcast of Assembly proceedings

Source: Public hearing held in Delhi as part of the study.

7.3.3 Record keeping

PIOs were asked if consolidated information was maintained by them or by the PA on the implementation of the RTI Act and disposal of RTI applications. They were specifically asked if they maintained consolidated information in terms of record of applications received, date on which information was sent, number of applications where information was provided, number of applicants who were denied information and the justification for denial. Overwhelmingly, PIOs claimed to maintain the requisite data (see Chart 7D).



However, when the survey teams asked PIOs to provide year-wise information on the number of RTI applications received by them, only 47% were able to provide the requisite information for the year 2012-13. Further, RTI applications we filed with 231 PIOs, seeking information on the number of RTI applications received, disposed and rejected, etc. by their PAs, show that only 56% of PAs were able to provide the requisite data (see Chapter 6 for detailed results).

67% of PIOs interviewed, stated that they/their department had made changes in their way of functioning, decision-making, information management, etc., as a result of the RTI Act. The key change cited by 36% was improvement in record maintenance (Table 7.7).

Table 7.7 Changes made as a result of the RTI Act	
Improving record maintenance	36%
Digitization & putting records on website	28%
Changing procedures of decision making	9%
More transparent & accountable	11%
More alert & responsible	8%
Misc.	8%

7.4 Discussion

Current levels of compliance with the legal requirements for proactive disclosures leave much to be desired, as seen in the findings above and even conceded by the government.⁷¹ One possible explanation for the lackadaisical implementation of section 4 is that the RTI law does not require the PA to designate a PIO to implement this section. Consequently, the law does not prescribe a penalty for violating the provisions of section 4. Also, there are no mechanisms for monitoring compliance of proactive disclosures (a provision which exists in some other

Box 7.7 - Mizoram shows the way

Rule 6(c) of the 2010 RTI rules of Mizoram states that if information is not disseminated as required by section 4, then no fee can be charged for providing it in response to an RTI application.

⁷¹ See point 2 on page 1-http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/Suo_moto_disclosure-15042013.pdf

countries like Australia where the Information Commission periodically reviews the proactive disclosures of PAs - see chapter 12). The absence of a compliance monitoring mechanism has also been recognized by the government⁷² as one of the reasons for poor implementation of the proactive disclosure provisions of the RTI Act.

Through the DoPT guidelines issued in 2013, the government attempted to address this lacuna by recommending that a nodal officer be put in charge of ensuring compliance with provisions for proactive disclosures and also directed the PAs to submit compliance reports to the Central Information Commission and have their disclosures audited by a third party.⁷³ While these are important initiatives, the lack of information on the compliance with the guidelines on the website of the DoPT or the Central Information Commission makes it difficult to judge the effectiveness of the recommendations. Additionally, our findings suggest that despite these efforts, the situation is far from satisfactory.

The consequence of inadequate proactive disclosures is that the majority of people filing RTI applications are in fact seeking information, which should have been proactively provided by the government (see Chapter 5). An analysis of 987 randomly selected RTI applications from across the country showed that nearly 70% of RTI applicants sought information that should have either been made public or proactively provided to the applicant without having to file an application under the RTI Act. Clearly, the poor implementation of section 4 of the RTI Act wastes time and resources of people and public authorities alike.

The findings show that public authorities performed much better in providing information through their websites rather than through boards or records available in their office premises. 90% of the websites of PAs provided basic information about the RTI Act (in terms of name and contact details of PIO, application fee, etc.) while only 35% of PAs had boards displaying this information at their premises. Similarly, while 77% of the PAs had links to section 4 disclosures on their website, only 41% of PAs were able to provide records for inspection, containing particulars of information as defined in section 4, at their premises. Given the limited number of people who are able to access the internet in India, the poor availability of proactive disclosures at the premises of the PA is clearly a cause for concern. Proactive disclosures at the premises could also become an important means of creating awareness among people about the RTI Act as people often visit government offices in trying to seek information or resolution of their complaints. In 69% of rural FGDs and 83% of urban FGDs, people reported visiting government offices while trying to seeking information to resolve the problems faced by their community. Further, the lack of information and signage about the location of the PIO was cited as a major hindrance while filing RTI applications. 16% of those RTI applicants who went personally to the office of the PA reported difficulty in filing their applications as they were unable to locate the PIO.

Clearly, a lot more needs to be done in terms of ensuring that updated and meaningful information is proactively disclosed. A comprehensive mechanism to implement, update and monitor disclosures under section 4 of the Act is urgently required.

⁷² Ibid.

⁷³ Point 4 & 5 http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/Suo_moto_disclosure-15042013.pdf

Robust implementation of proactive disclosures is especially required given that often information seekers are subject to harassment, threats or even violence in their endeavor to access information. 15% of the RTI applicants interviewed reported that being harassed or threatened was amongst the key constraints faced by them in trying to access information using the RTI Act.

The poor state of record keeping and management is also a key cause for concern. Though nearly 70% of PIOs claimed that they/their PA maintained consolidated records of receipt and disposal of RTI applications, only 47% were able to provide information on the number of RTIs received by them and only 56% were able to provide relevant data in response to RTI applications seeking the same information. Section 25 of the RTI Act requires PAs to maintain this information and furnish it annually to the Information Commission. Inability to maintain even this basic information, which is also a statutory requirement, points to at least two sorts of problems. First, if this is reflective of the overall state of record management in PAs, clearly peoples' fundamental right to information is being hindered by the lack of preparedness of PAs to consolidate and provide information in a time-bound manner. The RTI Act recognizes the critical need for proper record maintenance and obligates PAs to *"maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act"* (section 4). Second and perhaps of even greater concern, is that if information on receipt and disposal of RTI requests is not being maintained, there can be little hope that PAs are periodically analysing the type of information being sought from them. This means that they will not be able to judge what information is commonly sought and make it available *suo motu*, or be able to add to this list as time goes by. Clearly, poor record maintenance is resulting in the collective waste of time, effort and resources of the government and citizens, in seeking and providing the same categories of information. The sole positive take-away was that 67% PIOs stated that they/their PA had made changes in their way of functioning, decision-making, information management, etc. as a result of the RTI Act.

In the ultimate analysis, an ideal transparency regime should reach a stage where all relevant information of public interest is available in the public domain and people have to file RTI applications to access only that information which pertains specifically to an individual and is not appropriate or relevant for public broadcast. The withering away of the need to file RTI applications should be the test for the effectiveness of proactive disclosures by PAs.

8. PUBLIC INFORMATION OFFICERS

- *All PIOs interviewed were aware that they were the designated PIOs.*
- *91.5% PIOs stated that they were aware of the provisions of the RTI Act.*
- *38% PIOs spent less than 2 hours a week on RTI related work, while 39% spent less than 5 hours a week.*
- *Request for voluminous information was the major difficulty faced by PIOs in responding to RTIs, followed by unclear applications.*

8.1 Introduction

Though the RTI Act provides access to information from many institutions outside the government, including non-government organizations substantially funded by public money, a large proportion of RTI applications at all levels are filed directly with the government, as it is the primary repository of information relevant to the public. Consequently, the objective of this assessment was to evaluate the working of the government machinery as a facilitator of the RTI Act, especially the functioning of public information officers (PIOs) who are, in a sense, the backbone of the RTI system. It is they who have the responsibility, under the Act, to receive requests for information, to process them, to decide what information can be given and what must be denied, and to ensure that the accessible information is given in time. They are the ones that can be penalized if things go wrong. Though they have the authority to demand cooperation from other officers who might control some or all of the information that has been asked for, they mostly carry the primary burden of servicing RTI applications alone. The RTI Act envisages that a PA should designate a PIO “in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act”.⁷⁴ Further, section 5 of the Act obligates PIOs to assist applicants in making requests for information.

8.2 Methodology

To assess the functioning of PIOs and understand their perceptions of the RTI Act, 59 Public Information Officers (PIOs)⁷⁵ of the sample PAs were interviewed at the district and state headquarters in the five states and at the Centre. Though the study covers a sample of 70 PAs, only 59 PIOs were willing to be interviewed. See Table 8.1 for the list of PAs in states where the PIOs were interviewed. Of the total number of PIOs interviewed, 14% were from the Central Government, 31% at the state headquarters and 56% at the

Table 8.1: List of PAs in states where PIOs were interviewed
‘X’ denotes that the PIO of the PA was interviewed

State	Headquarters/ District	Police	Revenue	Rural Development	Women & Child Development	Dept. of Health and Family Welfare	Public Health Engineering Dept.	Delhi Urban Shelter
Andhra Pradesh	Headquarters	X	X	X	X			
	Anantapur	X		X	X			
	Visakhapatnam	X		X	X			
Assam	Headquarters	X	X	X		X		
	Nalbari	X		X		X		
	Jorhat	X	X	X				
Bihar	Headquarters		X	X	X			
	Gopalganj		X	X	X			
	Purnea	X	X	X	X			
Rajasthan	Headquarters	X	X				X	
	Dungarpur	X	X	X			X	
	Karauli	X	X	X			X	
Delhi	Headquarters	X	X					X
	East	X	X		X			X
	North West	X	X					X

⁷⁴ Section 5(1) of the Act

⁷⁵ PIOs of the remaining 11 PAs were not willing to be interviewed

district headquarters. Eight⁷⁶ PIOs of the following PAs in the Central Government were also interviewed:

1. Ministry of Finance
2. Northern Railways
3. Ministry of Culture
4. Ministry of Social Justice
5. Ministry of Communication & IT
6. Ministry of External Affairs
7. Ministry of Rural Development
8. Ministry of Environment & Forests

Box 8.1 - Hesitant to share information?

The Department of Personnel & Training (DOPT), which is the nodal agency for the implementation of the national RTI Act 2005, refused to grant an interview with the PIO despite repeated requests!

The PIOs were asked a wide range of questions partly to assess their skills and attitude, and partly to evaluate the facilities and support they had from the government. Their views on the RTI Act and their suggestions for improvements were also solicited, as were details about their workload and the time they spent on RTI matters. Special emphasis was laid on determining the constraints and problems they faced as PIOs.⁷⁷ In addition, PIOs were also asked for how long they had been the designated PIO in their PA and whether they had earlier been a PIO in any other PA. This information was sought to gauge the continuity in the functioning of PIOs as that might have an impact of the officials' familiarity with record keeping and RTI processes.

8.3 Findings

The detailed findings pertain to 59 PIO interviews.

8.3.1 Experience and willingness

All the PIOs who were interviewed stated that they were aware of the fact that they were the designated PIOs in their public authority. 59% respondents stated that they had been PIOs for less than one year in their current department. Only 17% had been the designated PIO for more than two years in their PA (see Charts 8A to 8C). There

Chart 8A: Been PIO for less than 1 year in current PA

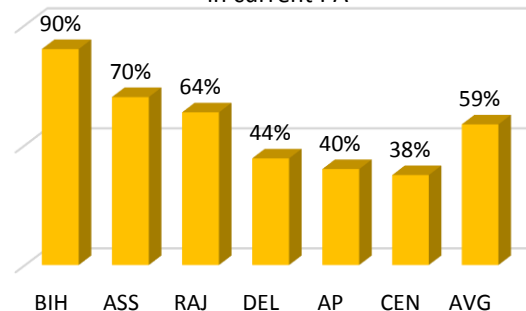


Chart 8B: PIO for more than 2 years in current PA

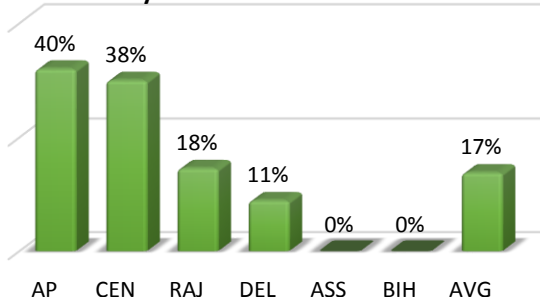
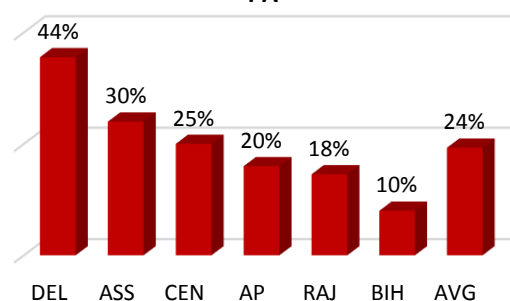


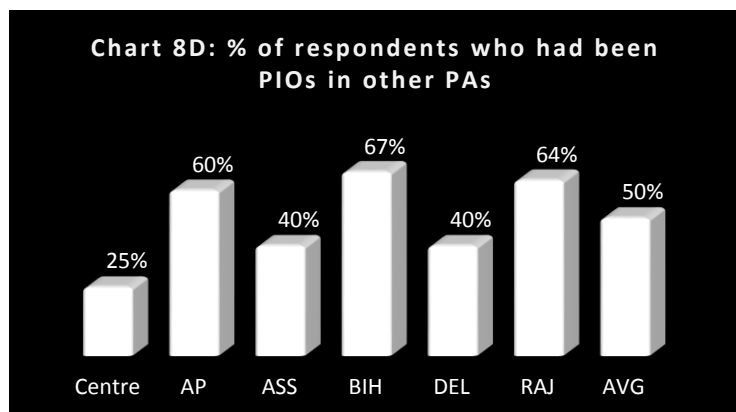
Chart 8C: PIO for 1-2 years in current PA



⁷⁶ PIOs of the ministries of Home Affairs and Personnel & Grievances refused to be interviewed for the study

⁷⁷ see questionnaire as annexure 4 at <http://www.rti-assessment.com/annexures.html>

was wide variation across the PAs in the sample states and the Central Government. While in AP and the Central Government, 40% and 38% respondents respectively stated that they had been PIOs for more than two years, in Bihar 90% of the respondents had been PIOs for less than one year.



50% stated that they had been PIOs earlier in another department (see Chart 8D) and 83% of them had been PIOs for more than one year in their previous PA. 25% of respondents of sample PAs from the Central Government had been PIOs in other PAs while in Bihar 67% reported that they had been PIOs in other departments.

Interestingly, 41% of the PIOs candidly admitted that they did not want to be PIOs, while an equal percentage (41%) said they wanted to be PIOs. The rest did not have an opinion on the matter. Again, there was wide variation across the PIOs interviewed in the states and the Central Government PAs. Bihar, with nearly 90% PIOs being happy to be PIOs was the leader in PIO satisfaction, while Assam was at the other extreme with 90% stating that they did not want to be PIOs (Table 8.2).

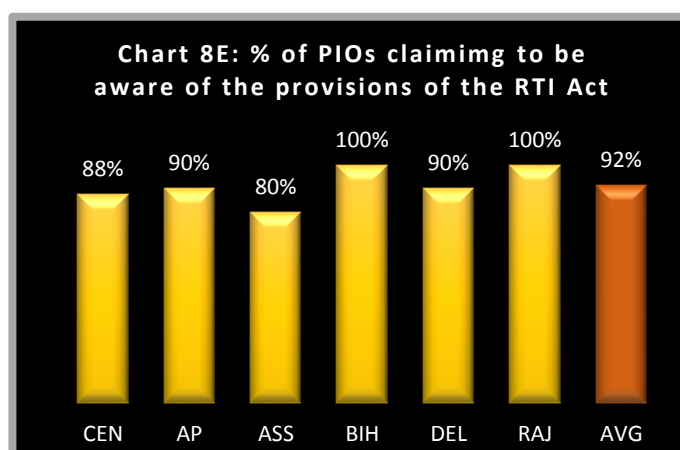
When asked why respondents wanted to be PIOs, 54% cited the fact that it provides power to people/officers, 14% to support the RTI, 11% to help people and 21% stated because they were duty bound.

When asked for reasons why they did not want to be PIOs, the leading cause cited by 60%, was the additional work load involved.

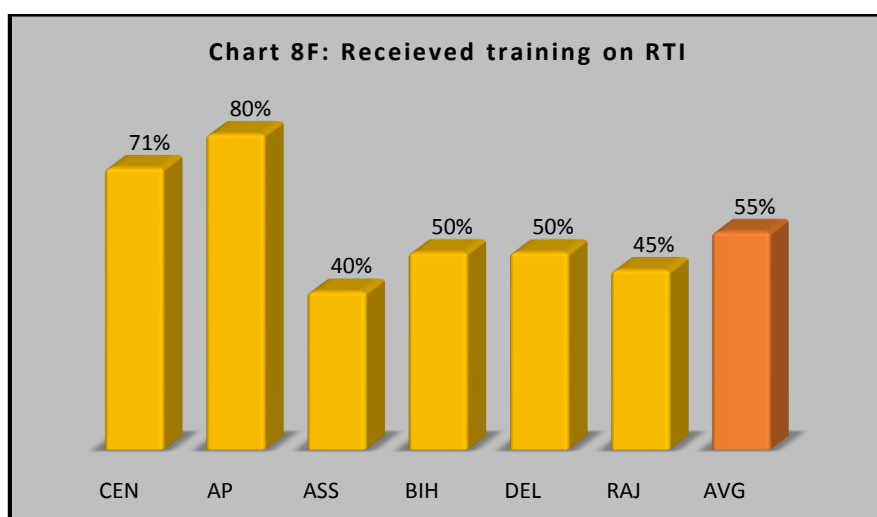
Table 8.2: Did you want to be a PIO?			
	Yes	No	Can't say
CEN	38%	63%	0%
AP	33%	33%	33%
ASS	10%	90%	0%
BIH	90%	10%	0%
DEL	40%	50%	10%
RAJ	36%	9%	55%
AVG	41%	41%	17%

8.3.2 Skills and Information

91.5% of the PIOs interviewed stated that they were aware of the provisions of the RTI Act while 6.8% stated that they were not aware and the rest did not provide an answer to this question. The break up across the respondents in the states and the Central Government is provided in Chart 8E. PIOs were also asked if they had a copy of the RTI Act and 12% stated that they did not, in fact, have one.



The level of awareness about the RTI Act claimed by the PIOs seems quite interesting given that 45% of the surveyed PIOs stated that they had never received any training about the RTI Act. There was a lot of variation among states. In AP, 80% of the PIOs stated that they had received training on the RTI Act while in Assam 60% PIOs stated that they had never received any training on the RTI (see Chart 8F). Of the PIOs that had received training, all except one stated that they felt that the training was helpful to them.



8.3.3 Work load and Facilities

On average, PIOs stated that they, received 17 RTI applications a month in 2012-13. This average has been extrapolated from the figures provided by 28 PIOs during the interview on the number of RTI applications received by them/their PA in 2012-13.

Another question asked of all the PIOs was the time they spent on RTI related work. 38% PIOs spent less than 2 hours per week on RTI related work - 11% spent less than one hour, and 27% spent one to two hours. 39% spent two to five hours per week. 14% stated they spent five to ten hours and only 9% stated that they spent more than ten hours a week on RTI related work (see Chart 8G).

25% of the PIOs of Central ministries claimed to spend more than 10 hours a week on RTI related work while none of the PIOs in Assam and Bihar spent those many hours (see Table 8.3).

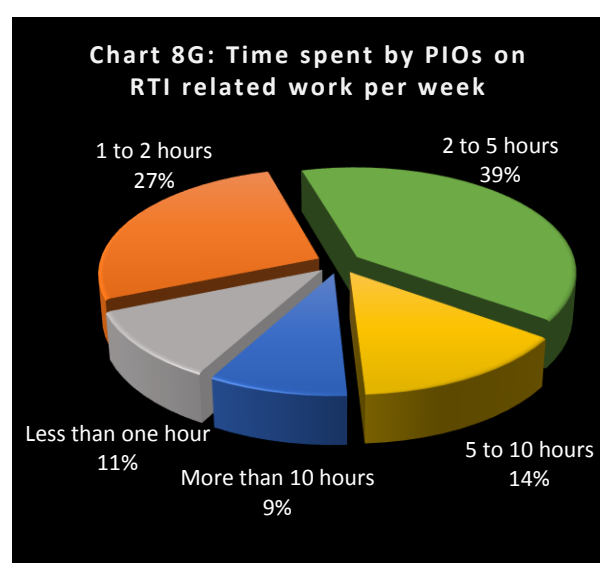
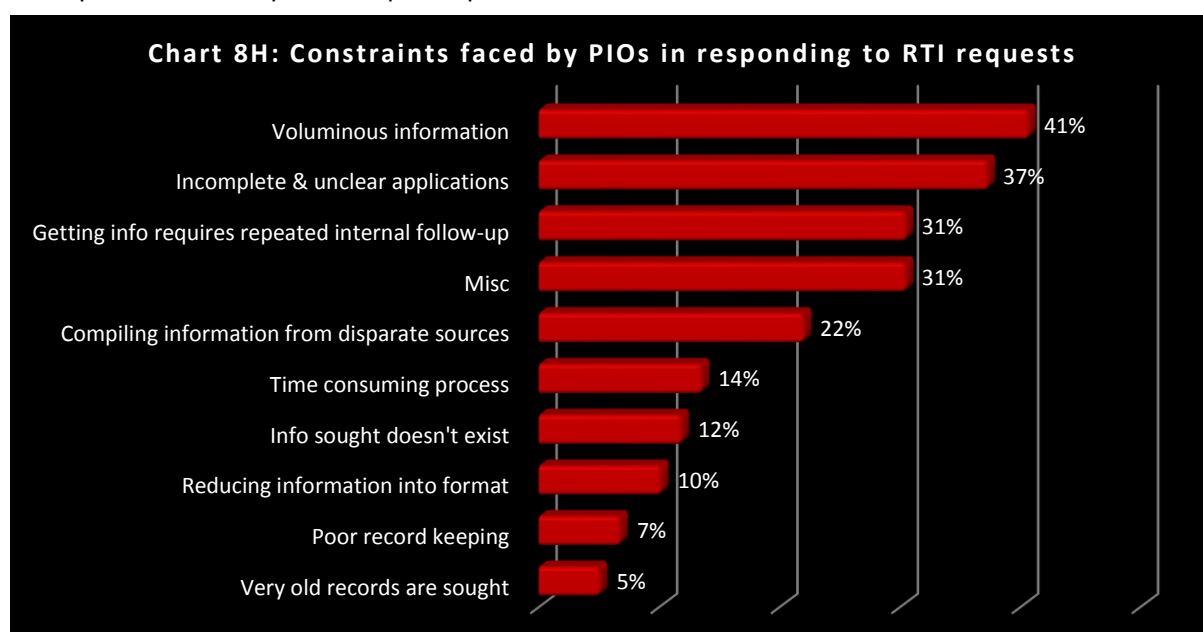


Table 8.3: time spent by PIOs on RTI related work per week					
	Less than one hour	1 to 2 hours	2 to 5 hours	5 to 10 hours	More than 10 hours
CEN	13%	0%	63%	0%	25%
AP	0%	40%	20%	30%	10%
ASS	14%	29%	43%	14%	0%
BIH	20%	40%	30%	10%	0%
DEL	10%	30%	30%	20%	10%
RAJ	9%	18%	55%	9%	9%

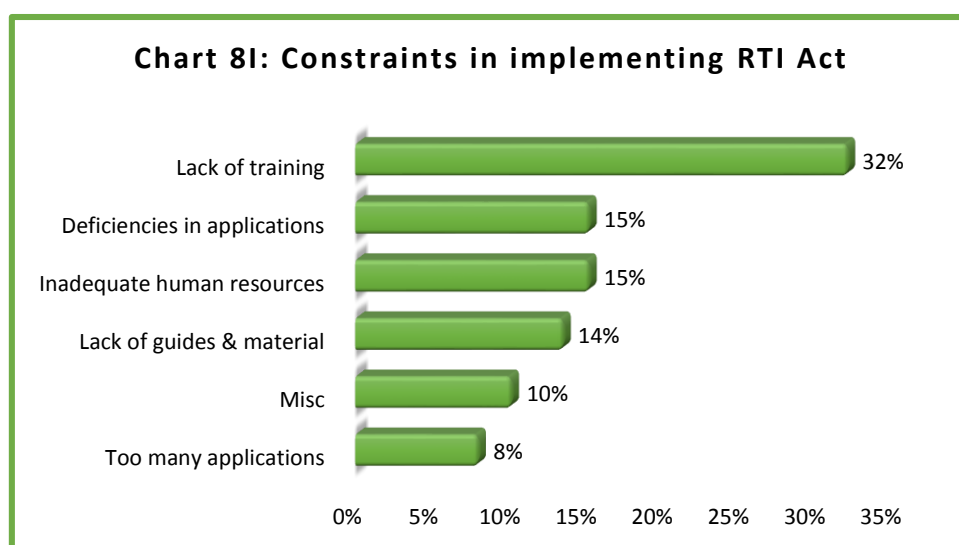
When asked how much time they spent **each month** appearing before the information commission, 70% PIOs stated that they spent less than one day a month appearing before the commission, while 22% stated they spent between one and three days a month, 4% stated they spent between three to six days a month and the rest (4%) spent more than six days a month appearing before the commission.

8.3.4 Constraints faced by PIOs

In order to understand the problems that PIOs might face in dealing with RTI applications, they were asked to indicate what their main difficulties were in responding to applications. 41% stated that their biggest challenge was dealing with applications seeking voluminous information. 37% cited incomplete and unclear applications as the main constraints (Chart 8H). The total is more than 100% as respondents could pick multiple responses.



In terms of constraints faced in implementing the RTI Act, the leading reason identified was lack of training, followed by deficiencies in applications and insufficient human resources (Chart 8I).

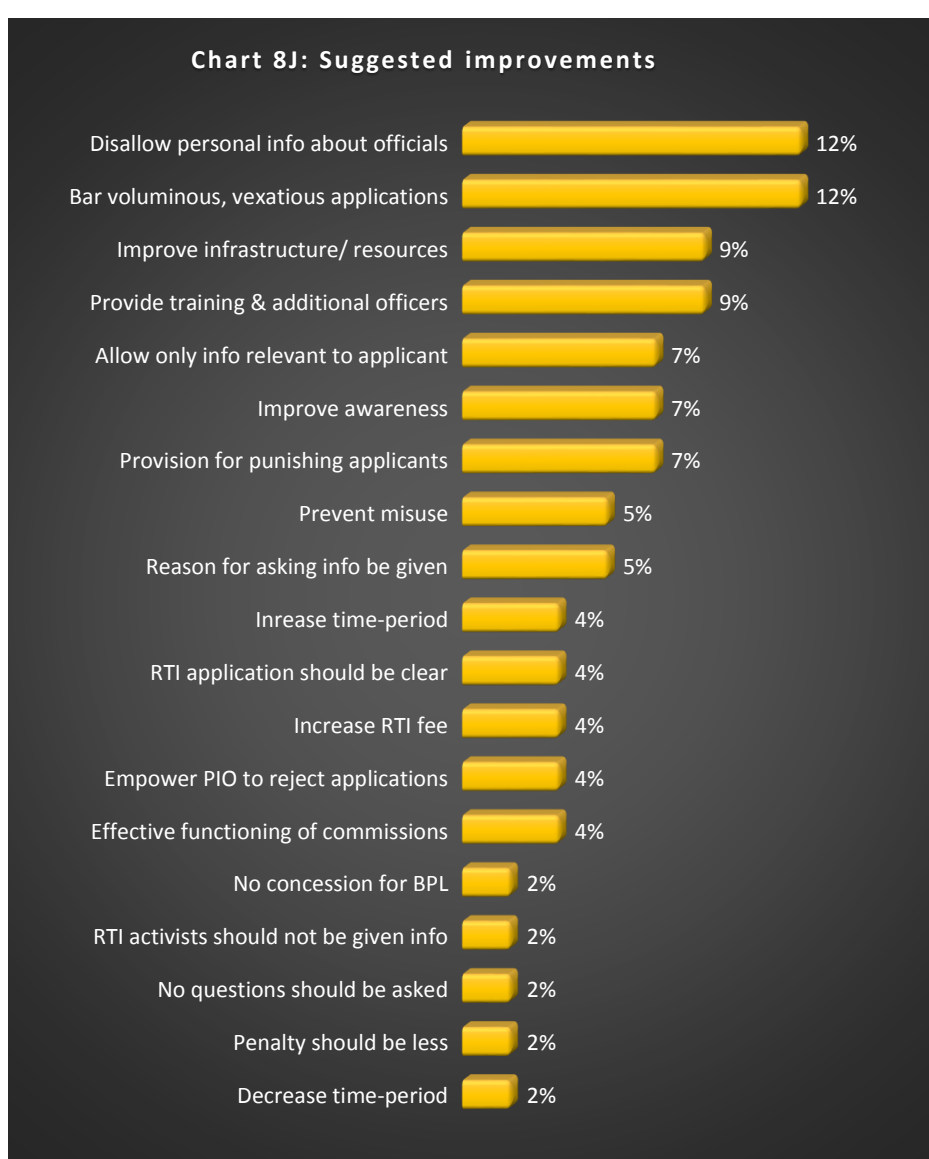


8.3.5 Perceptions of the PIOs about the RTI Act

In an open ended question, PIOs were asked to suggest improvements to the RTI law, and to the rules and procedures related to the processing of RTI applications.

Manifesting a healthy diversity of views and opinions, the PIOs came up with a large number of suggestions. 12% said that information about officials like the ACRs, etc., should be denied. 12% felt that lengthy RTI applications and those seeking voluminous information or information over a long period of time should be disallowed. 7% felt that there should be provisions for punishing the applicant while 2% felt that RTI activists should not be provided information under the Act!

A list of suggestions given by the PIOs, along with the percentage of PIOs making these suggestions, is given in Chart 8J.



8.4 Discussion

PIOs are at the front line of the RTI Act. They are the interface between people as information seekers and the government as a repository of information. In order to ensure robust implementation of the RTI Act, it is critical that PIOs are well trained, have the necessary resources to respond to information requests and are motivated to help citizens exercise their right to access information.

Encouragingly, the assessment found that 91.5% PIOs claimed to be aware of the provisions of the RTI Act. However, a cause for concern was that 45% PIOs said that they had never received any training on the RTI Act and 32% PIOs identified lack of training as the leading constraint in implementing the Act. Periodic training is critical to ensure that PIOs are aware of the latest court orders, rules and notifications, etc. that have a bearing on the Act. Further, trainings on good practices, awareness about actions which can result in penalties under the Act, etc., are key to ensuring that PIOs are equipped to implement the Act. The fact that 97% of those who had received trainings, found them helpful, underscores the urgent need to ensure periodic training of PIOs.

Box 8.2: PIO rewards RTI applicant

Vimla's husband retired from the Delhi Development Authority (DDA) in August 2005 after 25 years of service. Since his retirement, he was receiving a meagre monthly pension of Rs 1,700. Vimla filed an RTI application in December 2012 seeking information about the basis for calculating her husband's pension. To her surprise, she received a cheque of Rs 1,32,800 in her name! There was no information on how the amount had been calculated and most importantly on why the DDA had made a cheque in her name. She subsequently filed another RTI seeking details of why her name appeared on the cheque instead of her husband's. The PIO responded stating that the cheque was made in her name because she had filed the RTI application!

Source- Public hearing in Delhi



Vimla

Box 8.3: Whimsical fee demanded by PIO

Benu Debonath of Demaji district, Assam, had filed an RTI application in Oct. 2013 to the Nath-Jogi Development Control Board seeking information about development schemes, details of funds allocated and list of beneficiaries. In December, he received a letter stating that he must deposit Rs. 25,000 "for cost of photocopies and other expense" as further fee for seeking information. No calculation of how many pages constituted the said information, a requirement under the Act, was provided. He then filed an appeal to challenge the demand for fee as the RTI Act states that information provided after expiry of the stipulated time-frame has to be provided free of cost. After the appeal hearing, the PIO revised the amount of further fee and stated that Debonath must deposit Rs. 12,000 as the fee for the information consisted of 6000 pages. In February 2014, he filed a 2nd appeal and till the time of the public hearing, he hadn't heard back from the Information Commission.

Pradip Kaludi, of Hathigarh, Assam, had filed an RTI request in December 2012 seeking details of the district-wise allocation of the budget set aside by the Central Government for development schemes. The PIO replied asking for further fee of Rs one lakh in order to provide information. However, no calculation was provided detailing the number of pages which constituted the information, a requirement of the RTI Act. His complaint is pending before the commission in the matter. According to him, the information he had sought, i.e. the total amount allocated to each district, would not have been more than 50 pages.

Source: Public hearing in Assam

Box 8.4: A bitter pill for the applicant- lack of training or wilful violation?

Manju, a resident of Begumpur, Delhi, had filed an RTI application in February 2013 seeking information about the list of medicines available free of cost at the local dispensary and a copy of the stock register for these medicines. She was denied medicines by the dispensary on the pretext that these were not available. The PIO sent her a letter seeking further fee for providing the information. However the letter was sent after the expiration of the stipulated time-frame of 30 days, after which information has to be provided free of cost as per the provisions of the RTI Act. However, the first appellate authority, in violation of the RTI Act, rejected her plea that information should be provided free of cost due to the delay and instead directed her to pay the requisite fee. She paid the fee under protest in July 2013. However, till date she has not received the information.

Source: Public hearing held in Delhi

Ministers of the previous government, including the Prime Minister had publicly stated that the bureaucracy was becoming less efficient as government officials were forced to spend substantial amounts of their time dealing with RTI applications⁷⁸.

Addressing the annual CIC convention in 2011, the then PM had said, “A situation in which a public authority is flooded with requests for information having no bearing on public interest is

something not desirable”.⁷⁹ In 2012, addressing the convention again, the PM stated that requests for voluminous information or those seeking information for a long period of time were “diverting precious man-hours that could be put to better use”.⁸⁰ These assertions were not backed by data or evidence, a point which the office of the PM had to publicly concede when the RTI Act was invoked to ask for the basis of the PM’s views!⁸¹

Even the Supreme Court in a judgement observed, “The nation does not want a scenario where 75% staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties”.⁸²

However, the results of our study indicate a scenario quite contrary to the one put forth by the government. We found that in the PIO’s own perceptions, 38% spent less than two hours a week and 39% spent between two to five hours a week on RTI related work, in other words, 77% spent less than 12.5% of their time in doing RTI related work per week!

The time spent by PIOs also needs to be looked at in conjunction with the number of RTI applications dealt with. The information provided by PIOs in interviews suggests that on average PIOs received 17 RTI applications per month. While this might seem like a high workload, it must be remembered that the sample PAs chosen for the assessment were those that provide essential services to people and subsequently have greater public dealing/interactions with people than other departments. Further, as discussed in Chapter 5, an analysis of 987 RTI applications filed between 2011 and 2013 found that 67% applications sought information which should either have already been made public pro-actively without being requested for (49%), or proactively supplied to the applicant without her having to file

⁷⁸ <http://www.livemint.com/Politics/d7vW8h61I2Xr3STUI9UkWN/PM-signals-RTI-review-may-curb-disclosure.html>

⁷⁹ <http://cic.gov.in/convention-2011/Speeches/PMspeech.pdf>

⁸⁰ <http://cic.gov.in/Convention-2012/Speeches/PMspeech.pdf>

⁸¹ <http://www.freedominfo.org/2012/12/no-support-discovered-for-indian-pms-views-on-rti/>

⁸² <http://rti.drdo.gov.in/CIC%20decisions/cbse.pdf>

an RTI application (18%). The failure of the government in proactively disclosing information as required by section 4 of the RTI Act is also borne out through inspection of their premises. An audit of section 4 disclosures showed that in 65% of the PA premises inspected, no board displaying details of the PIO, fee, timings, etc., could be found and in 59% there were no records available for inspection containing the categories of information listed under section 4 (chapter 7).

Therefore, the time spent by PIOs on RTI related work and the number of RTI applications received could well be drastically reduced if the government were to ensure that provisions related to proactive disclosures by public authorities are properly implemented.

9. ADJUDICATORS: THE INFORMATION COMMISSIONS

- *Since the inception of the RTI Act, 87% of the chief information commissioners (CICs) and 60% of the information commissioners (ICs) across the country have been former civil servants. Only 5% of the CICs and 10% of the ICs have been women.*
- *In the 26 information commissions for which data was available, a total of 3,89,372 appeals and complaints were received between January 2012 and November 2013.*
- *Two commissions were non-functional – Manipur since March 2013 and Assam since March 2014. ICs of Rajasthan and Madhya Pradesh were not functioning for over one year each between January 2012 and December 2013.*
- *Pendency in 23 commissions for which data was available, was 1,98,739 as of December 31, 2013.*
- *In several commissions, it took more than one year for appeals/complaints to come up for hearing.*
- *At the monthly rates of disposal reported by ICs, an appeal/complaint filed on January 1, 2014 would come up for hearing in the Madhya Pradesh IC after 60 years – in the year 2074! In West Bengal it would come up in the year 2031!*
- *Penalty was not imposed in 96.3% of the cases where it was in fact impossible!*

9.1 Introduction

Information Commissions (ICs) under the Indian RTI Act have a unique position and responsibility. Unlike some other countries, the Indian information commissions are independent, have a high stature, have extensive powers including the power to impose penalties on officials and are the final interpreters of the RTI law. They are arbiters of decisions on what information is exempt and their decisions are binding, not recommendatory.

Under the RTI Act, information commissions have been set up at the centre (Central Information Commission) and in the states (state information commissions). The commissions consist of the chief information commissioner and up to 10 information commissioners, appointed by the President of India at the Central level and by the governor in the states.

The commissions adjudicate on appeals and complaints of citizens who have been denied access to information under the law. RTI users can file appeals to the commission if they are aggrieved by the decision of the first appellate authority or have not received the decision of the first appellate authority within the stipulated time-frame. The commission has the duty to receive complaints from persons with respect to any matter relating to accessing information under the Act.

“18. (1) Subject to the provisions of this Act, it shall be the duty of the ... Information Commission ..., to receive and inquire into a complaint from any person, —
(a) who has been unable to submit a request to a ... Public Information Officer ...;
(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 ...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..
(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.”

“19 (3) A second appeal ... shall lie ... with the Central Information Commission or the State Information Commission...”

Unfortunately, the RTI Act does not specify any time limit within which information commissions must dispose an appeal or complaint.

The commissions have wide-ranging powers including the power to require the public authority to provide access to information, appoint PIOs, publish certain categories of information and make changes to practices of information maintenance. The commissions have the power to order an inquiry if there are reasonable grounds for one, and also have the powers of a civil court for enforcing attendance of persons, discovery of documents, receiving evidence or affidavits, issuing summons for examination of witnesses or documents.⁸³

Section 19(8)(b) of the RTI Act empowers the information commissions to “require the public authority to compensate the complainant for any loss or other detriment suffered”.

Further, under section 19(8) and section 20 of the RTI Act, information commissions are given the power to impose penalties on erring officials. Section 20 of the RTI Act stipulates:

“Where the ... Information Commission ... at the time of deciding any complaint or appeal is of the opinion that the ...Public Information Officer ..., has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified ... 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 further that the burden of proving that he acted reasonably and diligently shall be on the ... Public Information Officer”

A popular understanding of the law is that whenever an appeal or a complaint is being disposed and one or more of any of the punishable violations has occurred, the commission is obliged under the law to either impose the prescribed penalty, after following the prescribed procedure, or state reasons why it is not imposing a penalty, from within the reasons allowed by law. The penalty is imposable whether or not asked for by the appellant or complainant, as long as it is warranted.

Consequently, ICs are widely seen as being critical to the RTI regime. In fact, many believe that the health of the RTI regime in a state or within the national government primarily depends on how effective and pro-active the information commission is. It is, therefore, but natural that right from the inception of the RTI Act enormous public attention has been focused on the information commissions, and their functioning has been extensively debated.

9.1.1 Issues

Some of the main issues regarding information commissions that have concerned the public include:

⁸³ Section 18 of the RTI Act

1. The appointment of information commissioners and the composition of information commissions, especially in terms of the balance between former members of the civil services and people from other backgrounds and professions.
2. The state of record maintenance by the ICs and transparency in the functioning of the commissions.
3. Disposal of appeals and complaints by the ICs – pendency and delays in the commissions and the consequent backlog.
4. Willingness of the commissions to levy penalties on erring officials and award compensation to applicants, where required.
5. Ability of commissions to ensure recovery of penalties and ensure payment of compensation.
6. Accountability of the commissions.

9.2 Methodology

9.2.1 RTI applications filed to information commissions

In order to analyse and assess the functioning of information commissions around the country, a total of 202 RTI applications were filed - seven⁸⁴ RTI applications⁸⁵ were filed with each state information commission (SIC)⁸⁶ and the CIC. The information sought included:

- Details of backgrounds of past and present information commissioners;
- The number of appeals and complaints received, disposed, rejected by the IC for the period Jan 2012 till November 2013;
- The quantum of penalties imposed by the IC, and the amount recovered, for the period Jan 2012 till November 2013;
- The quantum of compensation awarded by the IC, and the amount actually paid, for the period Jan 2012 till November 2013;
- Number of cases in which disciplinary action was recommended by the IC;
- Number of complaints in which inquiry was initiated and completed for the period Jan 2012 till November 2013;
- Number of appeals and complaints pending before the IC on 31st December 2012 and 31st December 2013;
- Number of appeals and complaints received by the IC stating that the information sought relates to the life and liberty of any person for the period Jan 2012 to November 2013 and the process adopted by the IC to deal with such complaints/appeals;
- Copy of rules/orders/guidelines regarding the functioning of the IC;
- System/procedure adopted by the IC to ensure implementation of its orders.

9.2.2 Analysis of the official websites of ICs

An analysis of the official websites of all 28 ICs was undertaken with a view to ascertain whether the websites provide relevant and updated information on the functioning of the ICs including the number

⁸⁴ In states like Chattisgarh and Karanataka where the ICs have framed Rules wherein there is a restriction on the number of words or subjects, more than 7 RTI applications were filed to seek the requisite information.

⁸⁵ RTI application can be read at annexure 5

⁸⁶ For the purpose of the study 28 ICs were covered, including the Central Information Commission. Jammu and Kashmir was excluded as the national RTI law is not applicable in the state. Also excluded from the purview of the study is the newly formed state of Telangana which came into existence in 2014 after the study was launched.

of commissioners in each commission, orders passed by the commissions and the annual reports of the ICs. Section 4 of the RTI Act states that, *“each public authority has an obligation 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.”*

9.2.3 Interviews with information commissioners

The information commissioners of Assam, AP, Rajasthan and Meghalaya and the CIC were interviewed regarding various aspects of the functioning of their commissions. They gave their views and suggestions on the key challenges faced by the commissions in servicing the Act.⁸⁷ A total of 14 commissioners were interviewed.

9.2.4 Telephonic interviews with IC officials

Information on the number of commissioners in each IC in the country was collected through telephonic interviews with officials in the commissions and other relevant stakeholders.

9.2.5 Public Hearings

A state-wide public hearing on the implementation of the RTI Act was held in each of the four states in the sample and in Delhi. In each public hearing, considerable time was spent on discussing the functioning of the information commission in that state and people testified about their experience with the appeal process and about the functioning of the commission. Close to 500 people participated in these public hearings.

9.3 Findings

9.3.1 Are information commissions functioning?

In two North Eastern states of the country – Assam and Manipur – the state information commissions were found to be non-functional. In Manipur, the serving state information commissioners retired in March 2013 and no new appointments were made. Similarly, in Assam, no new appointments were made after the information commissioners retired in March 2014.

According to media reports, in response to a public interest litigation,⁸⁸ the Manipur High Court in May 2013, ordered the state government to appoint information commissioners in the SIC within six months. However in violation of the court’s order the state had not appointed any information commissioners till the time of the publication of this report in September 2014.

In Rajasthan, the information commission was not functioning for almost 13 months in the period January 2012 to December 2013. In the period under review for the study, the IC of Madhya Pradesh was also not functioning for a period of over one year as it was without a chief information commissioner and other commissioners.

The chief information commissioner of the Central Information Commission of India retired on August 22, 2014. Despite persistent demands from RTI activists and users,⁸⁹ the Government of India had not appointed a new chief (as of September 30, 2014). While the commission was functional, the legality

⁸⁷ See IC Questionnaire at <http://www.rti-assessment.com/annexures.html>

⁸⁸ <http://kanglaonline.com/2013/05/hrlns-pil-leads-to-order-on-filling-up-rti-related-vacant-posts/>

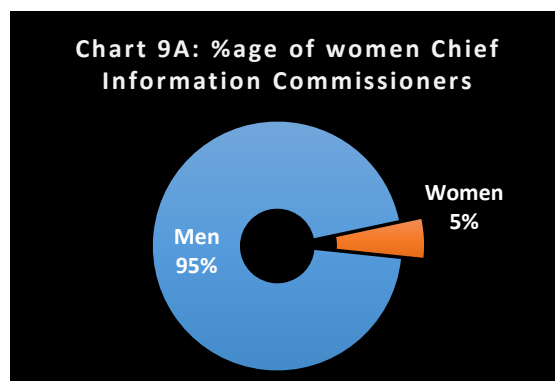
⁸⁹ See annexure 8, letter to President regarding appointment of Chief Information Commissioner in the Central Information Commission

of the orders given by the central information commissioners in the absence of the chief could be questioned.⁹⁰

9.3.2 Who are appointed as information commissioners?

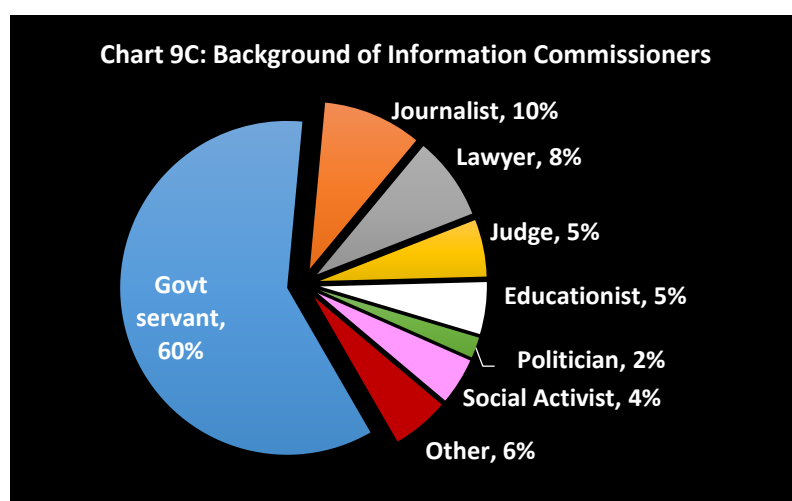
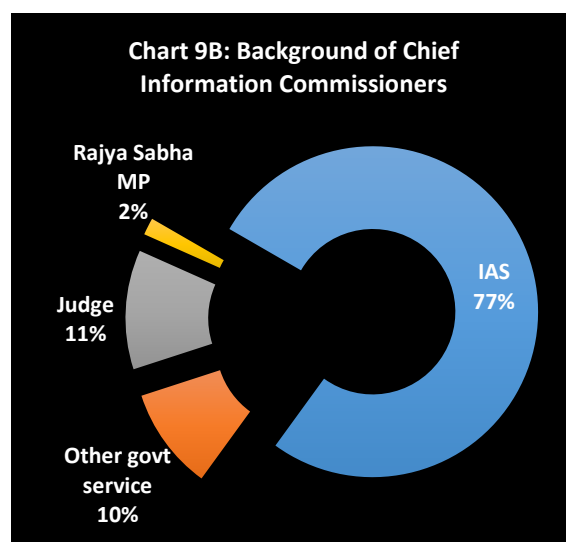
Gender parity

The findings of the study indicate that since the passage of the RTI Act in 2005, less than 10% of all information commissioners across the country have been women. The picture is even worse when it comes to the number of chief information commissioners. Only 5% of all chief information commissioners have been women!



Preponderance of retired civil servants

Since the RTI law came into effect, information commissions across the country have been headed overwhelmingly by retired civil servants, most of whom were former members of the Indian Administrative Service (77%). Of the 60 chief information commissioners for whom data was obtained, seven were former judges and six were former bureaucrats from government services (see Chart 9B) other than the Indian Administrative Service (IAS). In fact, ironically, the chief information commissioner of the CIC, who retired on August 22, 2014, was a former director of the Intelligence Bureau – a government organization which is outside the purview of the RTI Act and functions in an environment of utmost secrecy!



Among the information commissioners, again a large proportion were retired civil servants (60%), though this time there was a much wider variety of services represented (see Chart 9C). Other notable categories included journalists (10%), retired judges (5%), lawyers (8%), educationists (5%) and social activists (4%).

⁹⁰ <http://timesofindia.indiatimes.com/india/Headless-Central-Information-Commission-could-land-up-in-legal-tangle/articleshow/41561590.cms>

9.3.3 How transparent and accountable is the functioning of Information Commissions?

Analysis of websites of ICs

Analysis of websites of 28 information commissions (1 CIC & 27 State ICs) across the country showed that while all the ICs had their own official websites, there was considerable variation across ICs on the availability of information and the ease with which the website can be navigated and searched.

In the case of the state information commission (SIC) of Sikkim, none of the links on the official website were found to be functioning.

Websites of 25 out of the 28 ICs analysed, provided information on the number of commissioners with their names and designations in the IC. However, information on several websites was not updated, hence misleading. For example, on September 22, 2014, the website of the Assam IC stated that there was one chief information commissioner and one information commissioner in the SIC, whereas there was no commissioner in the state since March 2014. Similarly, the website of the Manipur

SIC stated that there were two incumbent information commissioners, whereas there had been no commissioner in the state since March 2013. The website of the Central Information Commission

Box 9.1- The mysterious Mr. CIC!

The 'Monthly Progress Report' link on the website of the Central Information Commission (cic.gov.in) provides information on the number of cases admitted and disposed by each commissioner. The dropdown list of commissioners offers a choice of 'CIC, Mr'. The link leads to a database showing that, as of September 29, 2014 (see below), there were 8,586 cases pending with Mr. CIC and not a single case has been disposed by him since January 2014! The question that begs to be asked is who is this mysterious Mr. CIC?

Monthly Progress Report As On 29-09-2014

CIC/IC :- Mr CIC , CIC

Year	Month	Opening Balance	Admitted	Disposed	Closing Balance
2014	January	2003	141	0	2144
2014	February	2144	283	0	2427
2014	March	2427	367	0	2794
2014	April	2794	289	0	3083
2014	May	3083	590	0	3673
2014	June	3673	1219	0	4892
2014	July	4892	1746	0	6638
2014	August	6638	1033	0	7671
2014	September	7671	915	0	8586

Box 9.2: Washing their hands off!

Disclaimer

RAJASTHAN INFORMATION COMMISSION

The contents in this site do not constitute advice and should not be relied upon in making decision. Neither the Rajasthan Information Commission nor RajCOMP Info Services Ltd. (RISL) or Department of Information Technology & Communication, Rajasthan is responsible for any damages arising from the use of the content of this site.

At present the site running on a test basis, where the information may not be accurate, Authoritative information may be taken from the lawful authorized source.

No queries will be entertained regarding the validity of information by the Rajasthan State Information Commission, Rajasthan.

However, you are welcome to bring to the notice of the Rajasthan Information Commission, Rajasthan any error omission etc. in the programme or the data for doing needful at our end.



I Agree



Do not Agree

shows 8,586 cases pending with a commissioner named "Mr. CIC" (see Box 9.1)!

22 commissions had uploaded their orders on the commission's website. Uttar Pradesh, Madhya Pradesh and Jharkhand did not upload any orders while in Manipur only "important decisions" were uploaded. The website of the Arunachal Pradesh SIC provided orders till 2009. In Jharkhand, orders could not be accessed unless all the filters were filled in, though none of the filter

details were provided. On the Goa website, orders were not updated after September 2012. The Kerala SIC website did not mention the dates on which orders were passed, and only 19 orders between 2007 and 2011 were uploaded on the Manipur IC website. In the case of Mizoram, orders regarding complaints were available till October, 2008 and appeals till January 2012. Only 13 SICs provided a search function to retrieve orders using keywords.

In 15 SICs the orders were available in English, while orders were available in the local language in six states (in Karnataka orders were both in English and the local language). Orders were uploaded in the PDF format except on the West Bengal website, where they were uploaded in Microsoft word format.

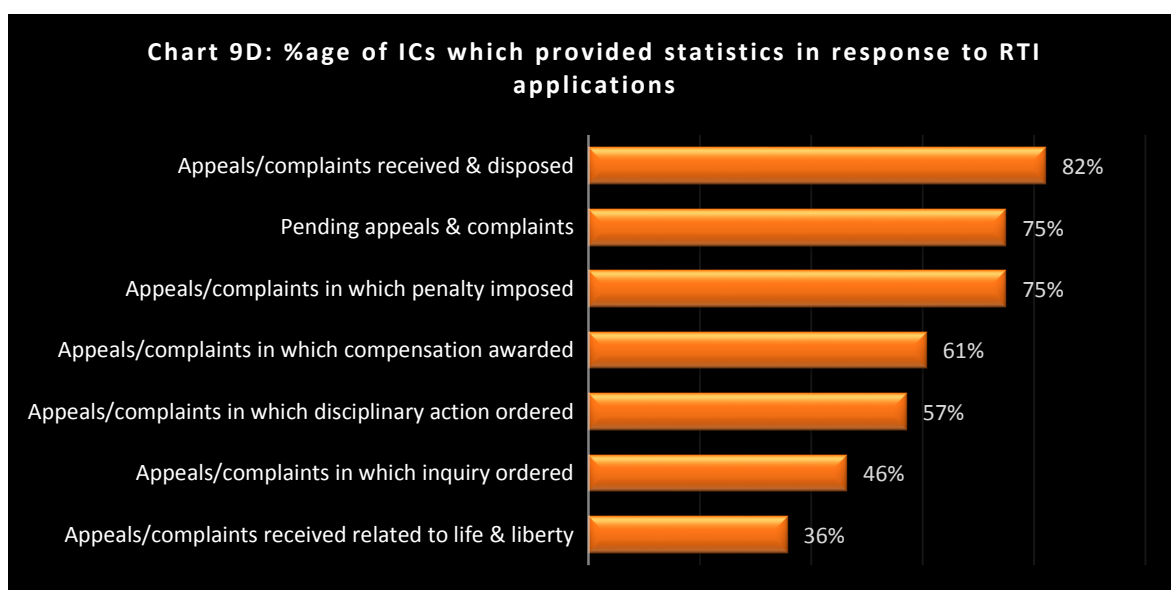
In Rajasthan, in order to view the decisions of the commission, a disclaimer had to be agreed to, which stated that “the information may not be accurate” and that “No queries will be entertained regarding the validity of information by the Rajasthan State Information Commission, Rajasthan”! See Box 9.2 for the text of the disclosure.

[Tracking RTI applications filed with the ICs](#)

RTI applications were filed to 28 ICs to seek information on their functioning. This was done to not only elicit information on the performance of ICs, but also judge how transparent they themselves were as public authorities - by seeing how much of the required information they maintained, maintained properly and how much they were willing to provide (see chart 9D).

23 of the 28 information commissions around the country, including the Central Information Commission, provided statistics on the number of appeals and complaints received and disposed, though in some cases information was not provided in the format asked for. Chhattisgarh, Manipur, Uttar Pradesh and Tamil Nadu did not provide the information sought (see Box 9.3). The Goa SIC sent bundles of registers from which it was impossible to extract the information sought.

21 commissions, including the CIC, provided statistics on the number of appeals and complaints pending before the commissions. ICs of Chhattisgarh, Jharkhand, Manipur, Uttar Pradesh and Tamil Nadu did not provide the information sought. Again, the Goa IC sent bundles of registers from which it was impossible to extract the information sought. The SIC of AP provided statistics which did not mention the year or the date for which statistics were sent.



Interestingly, in response to the RTI query, the IC of Uttar Pradesh stated that they did not maintain statistics on number of appeals/complaints received, disposed or pending. The response was clearly misleading as we did manage to find these figures on the website of the IC. The SIC of Tamil Nadu stated that information on appeals and complaints were not maintained separately, and instead of providing the information available with them, they chose to deny our request.

The SIC of Chhattisgarh rejected our request for information on the number of appeals/complaints received, disposed and pending, citing section 8(1)(c) of the RTI Act, which states that *“information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature”*. The PIO did not bother to clarify how disclosure of information on the number of appeals/complaints received, disposed or pending before the commission would cause a breach of privilege of Parliament or the State Legislature!

Moreover, our web analysis revealed that the commission had provided the number of appeals/complaints received, disposed and pending for the IC publicly on its website!

Box 9.3 - The search for the Manipur SIC

The SIC of Manipur did not respond or even acknowledge any of our RTI applications and first appeals. In fact, one of the RTI applications was returned stating that the address it was sent to does not exist, even though it was sent to the address provided on the official website of the Manipur SIC!

21 commissions provided information on the number of appeals/complaints in which penalty was imposed and the amount of penalty imposed and recovered, though several of these commissions provided only partial information. The commissions of Bihar, Chhattisgarh, Goa, Manipur, Punjab, Tamil Nadu and UP did not provide this information.

17 ICs provided information on the number of appeals/complaints in which compensation was awarded and the amount of compensation awarded and paid, though many of these commissions provided only partial information. Seven ICs did not provide the requisite data on the grounds that they do not maintain data on the cases in which compensation is awarded; these were Bihar, Chhattisgarh, CIC, Maharashtra, Punjab, Tamil Nadu and UP.

Only 16 Information Commissions were able to provide information on the number of cases in which the commission ordered disciplinary action against public information officers. The SICs of Arunachal Pradesh, Bihar, Chhattisgarh, Goa, Karnataka, Manipur, Odisha, Punjab, Rajasthan, TN, UP, and the CIC either did not maintain this information or refused to provide it. Only 13 information commissions provided information on the number of cases in which the commission initiated an inquiry under section 18 of the RTI Act.

Box 9.4 - Denying appellants their right

The RTI rules of AP, Meghalaya and Punjab forbid appellants or complainants from being represented by legal practitioners during hearings at the commission, while no such restriction is placed upon the PIO!

Under the RTI Act, information sought relating to the life and liberty of a person has to be provided within 48 hours, while no such time-frame has been defined for the appeals/complaints related to these RTI applications. In response to RTI applications filed to ICs as part of the study to access information related to the number appeals and complaints filed before the commission with relation to RTIs in which information sought relates to the life and liberty of any person for the period January 2012 to November 2013, only 10 SICs (AP, Assam, Himachal Pradesh, Karnataka, Meghalaya, Mizoram,

Nagaland, Odisha, Sikkim & Tripura) provided the requisite information. The rest of the commissions, including the CIC, stated that these figures were not maintained by the commission or did not provide the requested information.

[Annual Reports of ICs](#)

While much of the information sought in the RTI applications filed by us should in any case have been available in the annual reports of each commission, unfortunately our analysis of the IC websites revealed that many of the commissions had not posted their annual reports on the web and very few had updated the information.

No information about annual reports was available on the websites of five SICs – Madhya Pradesh, Sikkim, Tamil Nadu, Tripura and Uttar Pradesh.

In September 2014, only the CIC and seven SICs had provided annual reports for the year 2013 on their websites.

Table (9.1) clearly shows that an overwhelming majority of ICs are escaping accountability to the citizens of the country by not preparing and/or uploading their annual reports, as mandated by the law, on their official websites. In addition, answerability to the Parliament and state legislatures is also compromised when such reports are not submitted as required.

Box 9.5 - The arduous journey of annual reports

In response to a question on whether the Assam SIC had prepared an annual report as required under section 25 for the years 2010-13, the ex-CIC of Assam in a personal interview stated that the annual report of 2010-11 had been compiled, printed but not published while the annual report of 2011-12 had been compiled but not printed and the annual report of 2012-13 was still under compilation!

Source: Interview with former information commissioner of Assam

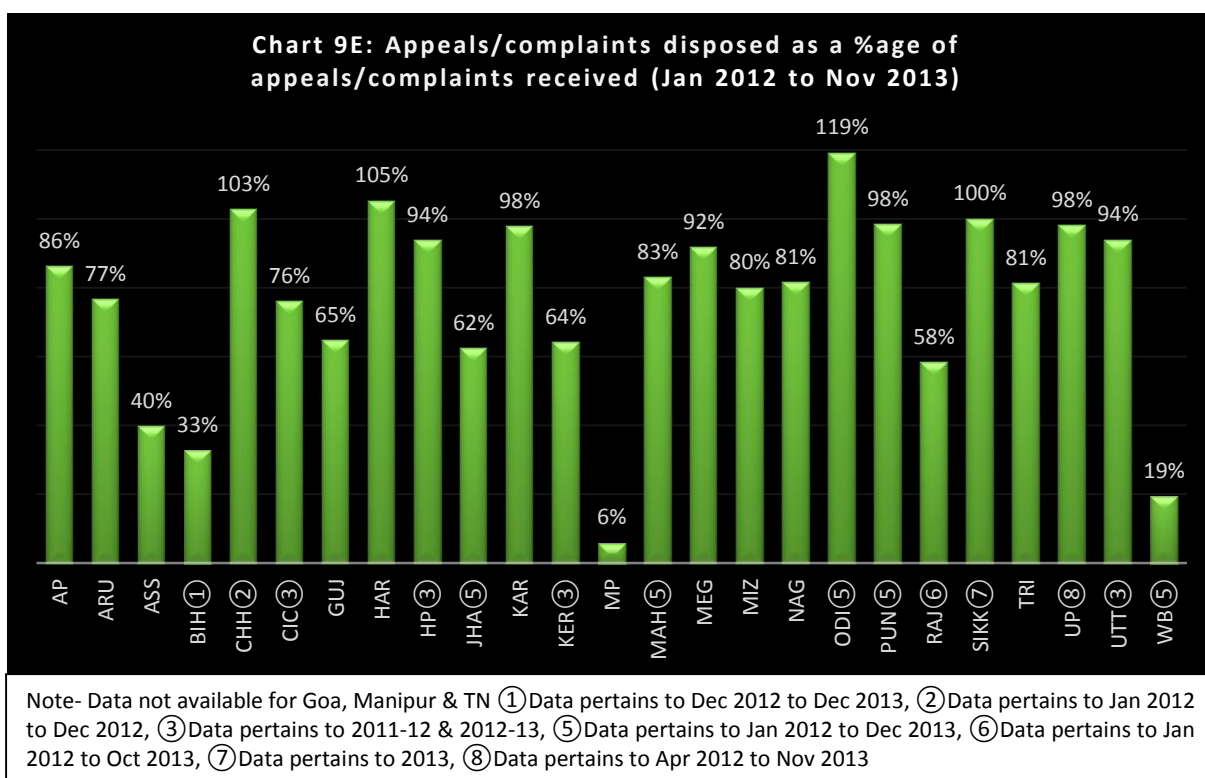
Table 9.1: Availability of Annual Report on the websites of Information Commissions as on September 20, 2014

S. No.	Commission	Latest year for which report available
1	Andhra Pradesh	2012
2	Arunachal Pradesh	2007
3	Assam	2009
4	Bihar	2012
5	Chhattisgarh	2012
6	CIC	2013
7	Goa	2008
8	Gujarat	2013
9	Haryana	2006
10	Himachal Pradesh	2013
11	Jharkhand	2011
12	Karnataka	2013
13	Kerala	2011
14	Madhya Pradesh	Not available
15	Maharashtra	2013
16	Manipur	Not available
17	Meghalaya	2012
18	Mizoram	2013
19	Nagaland	2013
20	Odisha	2012
21	Punjab	2008
22	Rajasthan	2013
23	Sikkim	Not available
24	Tamil Nadu	2008
25	Tripura	Not available
26	Uttar Pradesh	Not available
27	Uttarakhand	Not available
28	West Bengal	2009

9.3.4 Number of cases dealt with by information commissions

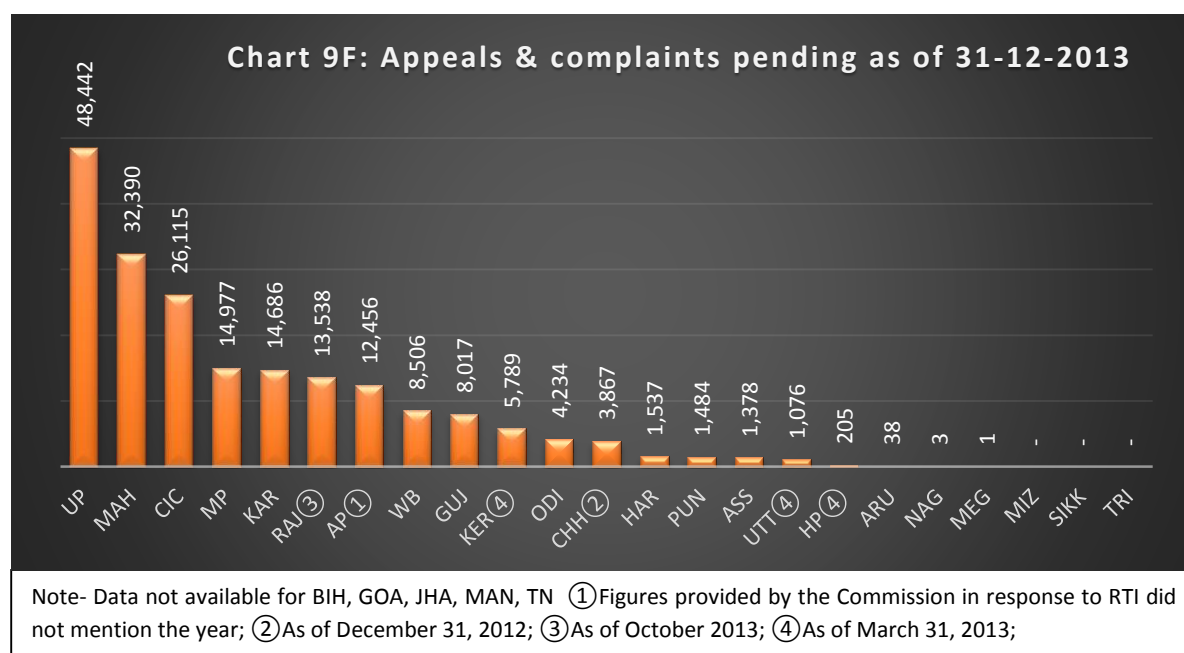
3,89,372 appeals and complaints were received and 3,06,724 were disposed between January 2012 and November 2013 by 26 ICs. The IC-wise break up of appeals and complaints received and disposed is given in Table 9.2. Maharashtra received the highest number of appeals and complaints (73,968) followed by the CIC (62,723) and UP (62,008). Mizoram and Nagaland received the lowest number of appeals and complaints, 25 and 70 respectively. In terms of disposal, Maharashtra SIC disposed the highest number of appeals and complaints, 61,442, followed by 60,875 disposed by UP and 47,662 by the Central IC. The percentage of appeals and complaints disposed by each IC is given in Chart 9E. Odisha, Haryana and Chhattisgarh disposed more appeals and complaints than they received between Jan 2012 to Nov 2013, hence the percentage is over 100.

Table 9.2: Appeals & complaints received & disposed by ICs January 2012 to November 2013				
S. No.	Commission	Received	Disposed	Cases disposed as a %age of cases received
1.	Maharashtra ⑤	73,968	61,442	83
2.	Uttar Pradesh ④	62,008	60,875	98
3.	CIC ③	62,723	47,662	76
4.	Karnataka	24,155	23,617	98
5.	Gujarat	31,884	20,657	65
6.	Andhra Pradesh	18,198	15,671	86
7.	Punjab ⑤	12,733	12,538	98
8.	Odisha ⑤	9,822	11,710	119
9.	Haryana	10,139	10,674	105
10.	Uttarakhand ③	10,016	9,406	94
11.	Bihar ①	26,265	8,616	33
12.	Rajasthan ⑥	12,865	7,505	58
13.	Kerala ③	7,978	5,119	64
14.	Chhattisgarh ②	2,986	3,067	103
15.	Jharkhand ⑤	4,748	2,960	62
16.	Himachal Pradesh ③	2,341	2,197	94
17.	Assam	2,466	981	40
18.	West Bengal ⑤	4,938	954	19
19.	Madhya Pradesh	8,051	472	6
20.	Arunachal Pradesh	309	237	77
21.	Sikkim ⑦	127	127	100
22.	Meghalaya	98	90	92
23.	Tripura	86	70	81
24.	Nagaland	70	57	81
25.	Mizoram	25	20	80
26.	Goa ②	373	NA	NA
	TOTAL	3,89,372	3,06,724	79
Notes- Data not available for Manipur & TN ① Data pertains to Dec 2012 to Dec 2013, ② Data pertains to Jan 2012 to Dec 2012, ③ Data pertains to 2011-12 & 2012-13, ④ Data pertains to Apr 2012 to Nov 2013, ⑤ Data pertains to Jan 2012 to Dec 2013, ⑥ Data pertains to Jan 2012 to Oct 2013, ⑦ Data pertains to 2013				



9.3.5 Backlogs in the information commissions

The collective backlog in the disposal of appeals and complaints in the 23 information commissions, from which data was obtained, was alarming. 1,98,739 cases were pending in just these 23 ICs as on December 31, 2013. The commission-wise break up of appeals and complaints pending is given below (Chart 9F). The maximum number of appeals/complaints were pending in UP (48,442) followed by Maharashtra (32,390) and CIC (26,115). There were no backlogs in Mizoram, Sikkim and Tripura.



Box 9.6 - Justice delayed is justice denied

Sumitra, a 73 year old widow lives alone in abject poverty in Lal Gumbad Camp, a slum in South Delhi.

Sumitra was a beneficiary of the widow pension scheme of the Delhi government and her pension was her sole means of income. In April 2012 she stopped receiving her pension without any information from the concerned department. In June 2013, she filed an application under the RTI Act seeking information on the status of her pension. She filed a second appeal before the Central Information Commission on 27th of August 2013 as she did not receive complete information from the PIO even after filing her first appeal. At the time of the public hearing in Delhi in May 2014, she stated that her appeal was still pending.

Source- Public hearing held in Delhi as part of the assessment



Sumitra

Using the monthly disposal rate of ICs, if an appeal/complaint was filed on January 1, 2014 (assuming

Table 9.3: Estimated time for an appeal/complaint filed on January 1, 2014 to come up for hearing before the IC

IC	Pending as on 31-12-2013	Monthly disposal rate reported by ICs	Time before new appeal is heard
MP	14,977	21	60 years & 10 months
WB	8,506	40	17 years & 10 months
RAJ ^③	13,538	341	3 years & 4 months
ASS	1,378	43	2 years & 8 months
KER ^④	5,789	213	2 years & 3 months
AP ^①	12,456	681	1 year & 6 months
UP	48,442	3,044	1 year & 4 months
CHH ^②	3,867	256	1 year & 3 months
KAR	14,686	1,027	1 year & 2 months
CIC ^③	26,115	1,986	1 year & 1 month
MAH	32,390	2,560	1 year & 1 month
GUJ	8,017	898	9 months
ODI	4,234	488	9 months
ARU	38	10	4 months
HAR	1,537	464	3 months
PUN	1,484	522	3 months
UTT ^④	1,076	392	3 months
HP ^④	205	92	2 months
NAG	3	2	1 month
MEG	1	4	0
MIZ	-	1	-
SIKK	-	11	-
TRI	-	3	-

Note- Data not available for BIH, GOA, JHA, MAN, TN ^①Figures provided by the Commission in response to RTI did not mention the year, ^②As of December 31, 2012, ^③As of October 2013, ^④As of March 31, 2013

appeals/complaints were heard in a chronological order) the hearing in the Madhya Pradesh state IC would come up after 60 years - in the year 2074! In West Bengal it would come up in the year 2031! (See Table 9.3)

The massive backlog in disposal of appeals and complaints in the information commissions is effectively denying people their fundamental right to information – it is resulting in citizens having to wait for excessively long periods of time to have their appeals and complaints heard. In the state level public hearings many people testified that it takes them over one year to get a hearing at the ICs (see Box 9.6 and 9.7).

Box 9.7- Waiting for Godot!

An appeal was filed with the State Information Commission of West Bengal in the year 2009 as part of the 2008-09 RaaG study. The notice of hearing for the appeal was received in August 2014 and the hearing was fixed in the matter on September 19, 2014 – five years after the appeal was filed with the commission!

9.3.6 How frequently do information commissions impose penalties?

Findings suggest that for the period January 2012 to November 2013, the number of cases in which penalty was imposed in the 21 states where this information was provided, were 3,870. If this figure is compared to the total number of cases disposed by the ICs in this period in the corresponding 21 states, the ratio of number of cases where penalty was imposed to the total number of cases disposed was 1:57. Penalty was imposed in just 1.75% of cases disposed. Table 9.4 gives the commission-wise breakup of the number of cases in which penalties were imposed and the quantum of penalties imposed and recovered.

Of course, these macro statistics cannot be fully appreciated unless one can estimate the number of cases where penalty was imposable. Unfortunately, such an estimate is not possible for most categories of violations without doing a detailed analysis of each case. However, for cases of delay in giving information, which are by far the most common of the violations, it is easier.

In the RaaG study undertaken in 2008-09⁹¹ it was found that, by very conservative estimates, in 47% of the

Table 9.4: Penalty imposed and recovered (January 2012 till November 2013)				
	State	No. of cases where penalty was imposed	Penalty imposed (₹)	Penalty recovered (₹)
1	AP ^①	611	31,29,750	4,59,750
2	ARU	8	1,22,230	1,14,730
3	ASS	28	4,95,750	4,95,750
4	CHH ^②	-	14,10,250	NA
5	CIC	214	41,18,250	20,57,877
6	GUJ	20	3,27,500	3,06,500
7	HAR	283	20,88,000	8,86,750
8	HP	71	4,80,950	4,80,950
9	JHA	45	9,45,000	NA
10	KAR ^③	537	1,27,76,500	NA
11	KER	102	5,92,065	2,97,500
12	MP	2	50,000	50,000
13	MAH ^①	844	94,19,500	NA
14	MEG	12	1,24,250	1,24,250
15	MIZ	-	-	-
16	NAG	6	1,14,750	1,14,750
17	ODI	314	49,82,499	13,15,750
18	RAJ	450	70,85,000	17,45,000
19	SIKK ^④	6	30,250	30,250
20	TRI	1	5,000	-
21	UTT ^③	313	20,15,750	1,04,750
22	WB	3	31,000	1,000
	ALL INDIA	3,870	5,03,44,244	85,85,557
Note- Data not available for BIH, GOA, MAN, PUN, TN and UP ^① For the period Jan 2012 to Dec 2013, ^② For the period 2012, ^③ For the period 2011-12 & 2012-13, ^④ For the period 2013				

⁹¹ Of the 48,140 cases that were disposed in the period under review in the RaaG 2008-09 study, 31,719 were appeals and 16,027 were complaints. The rate at which appeals and complaints were allowed averaged around 50%, so it was concluded that 15,000 appeals and 8000 complaints were (wholly or partly) allowed.

In the 15,000 appeals that were partly or wholly allowed, by definition some or all of the information had not been provided in the specified time and, therefore prima facie these 15,000 cases attracted a penalty for delay. The fact that they had been filed in the commission as second appeals meant that they must have gone through the first appellate process and, therefore, given the time frame prescribed for each step, it is unlikely that the delay in any case would be less than 100 days. Of the 8000 complaints, on the face of it, it cannot be determined what the basis of complaint was. However, the sample looked at in the RaaG 2008-09 study suggested that in 95% of complaint cases there was delay involved, even if some other violations are also present.

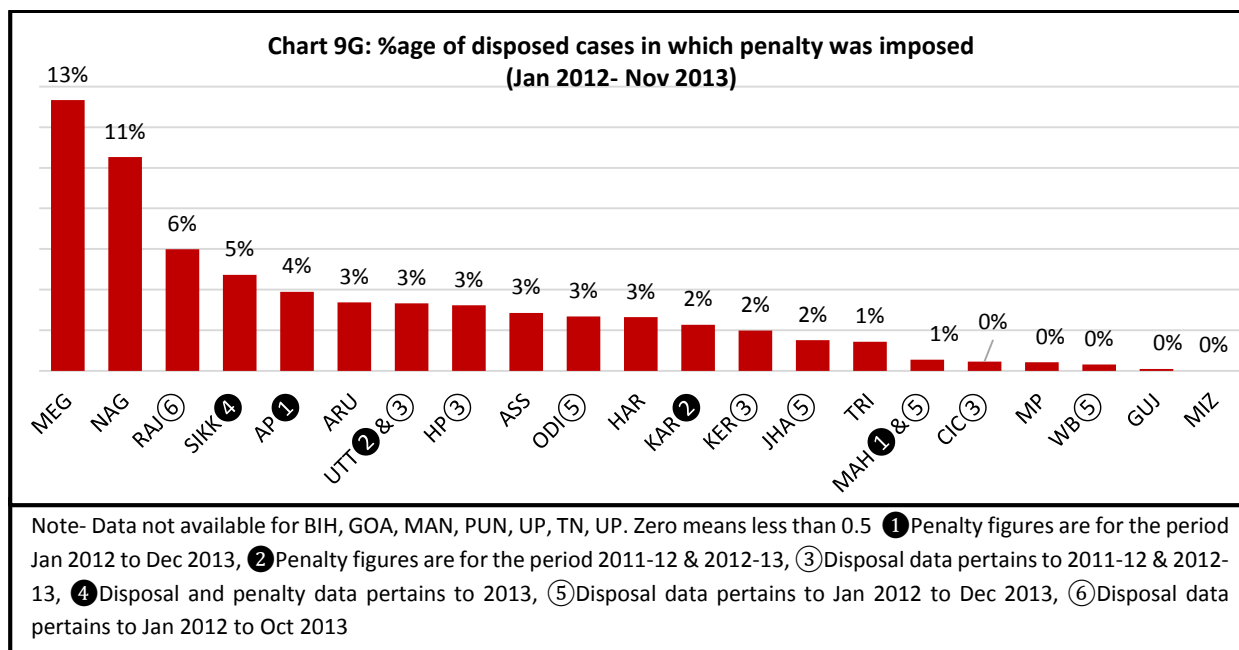
Here, again, it was not possible to tell, without examining each case, how much delay was being complained about. But, again, the sample survey suggested that in most cases where complaints were filed, the delay was of over 14 days, in some cases it ran to over a year. To be conservative, a delay of 14 days was assumed for 95% of the complaints allowed.

Another 15,000 appeals that were not allowed, but some or many of them might attract a penalty because the either the PIO did not respond at all, or did not respond in time, refusing the information. However, as it was impossible to assess the numbers without a detailed study, this category, as well as the category of complaints that were not allowed, were left out of the calculation.

Therefore, the number of cases where some penalty should have been imposed, by very conservative estimation, was 22,500 in the 18 commissions for which the relevant data was available – or 47% of cases disposed. Report available at <http://freedominfo.org/documents/india-safeguarding-executivesummary.pdf>

cases that were disposed by the ICs, some penalty should have been imposed (just for delayed supply of information).

If the estimate of 47% arrived at in the RaaG study in 2008-09 is used, of the 2,21,628 cases that had been disposed of between January 2012 and November 2013 (subject to notes in chart) in the 21 ICs for which disposal and penalty data was available, the number of cases where some penalty should have been imposed, by very conservative estimates, would be 1,04,165. Actual penalties were imposed only in 3,870 cases – only in 3.72% of the cases where they were imposable!

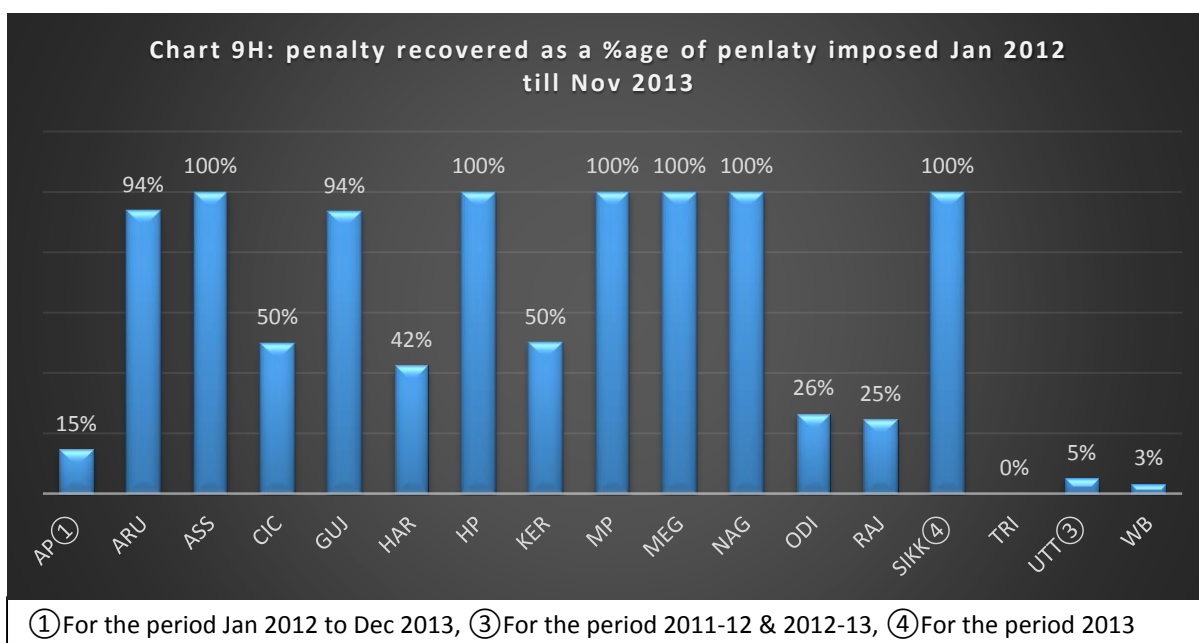


The total quantum of penalties imposed in the 22 states from January 2012 to November 2013 was Rs. 5,03,44,244. The quantum of penalties recovered for the same period was Rs. 85,85,557 for 18 states. Information on amount of penalty recovered was not available for four states- Chhattisgarh, Jharkhand, Karnataka and Maharashtra.

Among the commissions that provided information, the IC of Maharashtra imposed penalty in the maximum number of cases (844). In terms of quantum of penalty imposed, the front runners were, Karnataka (Rs. 1,27,76,500), Maharashtra (Rs. 94,19,500) Rajasthan (Rs. 70,85,000), Odisha (Rs. 49,82,499) and CIC (Rs. 41,18,250). Chart 9H shows the penalty recovered as a percentage of the penalty imposed.

Box 9.8 - Enforcing penalties and compensation

Several states have defined provisions through rules and notifications to ensure recovery of penalty. In Mizoram, as per the rules issued in 2006, if a penalty or damages are not paid within 30 days, the amount may be recovered from the salary of the government servant or from land arrears in case of others. As per the Uttarakhand RTI Rules 2013, penalties imposed on PIOs and compensation to be paid by public authorities have to be recovered within six months. In Meghalaya, the rules (of 2007) specify that failure to pay penalty within 30 days “shall be deemed to be a public demand as defined under section 3 of the Bengal Public Demands Recovery Act 1913”. Madhya Pradesh, through its RTI rules, states that penalties should be deposited within a month from the date of the order.



9.3.7 How often do commissions award compensation?

ICs are empowered to award compensation to a complainant for any loss or other detriment suffered. Despite the fact that a very large percentage of appeals and complaints would be the result of wrongful denial or delay in providing information, and most cases, if not all, must have involved expense on part of the appellant, compensation has been awarded in very few cases – essentially 1339 for the period January 2012 to November 2013 in the 16 commissions for which information was available. Only 19 ICs were able to provide figures on amount of compensation awarded and only 12 were able to provide information on the amount of compensation actually paid (Table 9.5). ICs of Karnataka and Haryana awarded the highest amount of compensation, Rs. 7,69,900 and Rs. 7,50,490, respectively.

Table 9.5: Compensation awarded and actually paid (January 2012 till November 2013)				
	IC	No. of cases compensation awarded	Amount of compensation awarded (₹)	Amount of compensation paid (₹)
1	AP ^①	33	70,300	-
2	ASS	14	8,000	NA
3	CHH ^②	NA	1,59,950	NA
4	GUJ	NA	21,000	NA
5	HAR	486	7,50,490	2,70,415
6	HP ^③	51	95,750	95,750
7	JHA	1	10,000	NA
8	KAR ^③	471	7,69,900	NA
9	KER	1	25,000	-
10	MP	0	-	-
11	MAH ^①	106	4,07,000	NA
12	MEG	1	2,000	2,000
13	MIZ	0	-	-
14	NAG	0	-	-
15	ORI	35	1,18,500	5,000
16	RAJ	140	2,10,500	34,000
17	TRI	0	-	-
18	UTT ^③	NA	3,20,000	NA
19	WB	0	-	-
	TOTAL	1339	29,68,390	4,07,165

① Pertains to Jan-Dec 2013 ② Pertains to 2012 ③ Pertains to 2011-12 and 2012-13

Interviews with information

commissioners revealed that compensation provision has primarily been interpreted by commissioners to compensate the appellant for costs related to attending hearings and pursuing

Box 9.9 - Compensation only on paper

On 26/3/2012, an RTI application was filed seeking details of the status of ration cards of 8 Antyodaya ration card holders (Antyodaya ration cards are given to the poorest of the poor). The 8 ration cards had been abruptly cancelled without providing any reasons to the beneficiaries (a violation of section 4(1)(d)) and consequently, the cardholders had been denied their food entitlements for more than a year. All the ration cardholders are extremely poor and are highly dependent on their monthly entitlement of food grains for their survival. One of the ration cardholders, Sanno Devi, is a widow and is deaf and dumb.

When complete information was not received even after filing a first appeal, a second appeal was filed before the Central Information Commission on 4/7/2012. In the hearing in February 2013, the Commission ordered the department to compensate the cardholders, as the denial of timely information had resulted in the loss of their food entitlements for a year. The Central Information Commission awarded a compensation of Rs. 18,000 to each cardholder, which had to be paid within 5 weeks of the order.

Despite repeated follow-up, the 8 ration cardholders had not received their compensation till May 2014 (at the time of the public hearing in Delhi), more than 15 months from the date of the order of the CIC.

In fact, the department moved the Delhi High Court in a writ petition against the order of compensation. The court dismissed the petition filed by the PA seeking a stay on the CIC's order and upheld the order of the CIC. Till September 2014, no compensation had been provided to any cardholders.

Source- Public hearing held in Delhi as part of the assessment and interviews with the ration cardholders

applications (primarily travel costs and cost of litigation), where the information was being wrongly delayed or denied. A distressing fact that emerged in the public hearings was the non-compliance by the PAs with the orders of the ICs vis-à-vis compensation. Even in the few cases where compensation was ordered by the ICs, it did not always get paid to the applicant (Box 9.9).



Sanno

9.3.8 Constraints faced by information commissions

In interviews with serving and retired information commissioners, several constraints in the functioning of information commissions were highlighted.

Perhaps the most critical constraint, which a majority of commissioners cited, was the lack of adequate support to the commissioners, both legal and administrative. In most commissions, it was felt that the staff strength was not sufficient. Several commissioners underlined the need to recruit professional experts to assist the commission for the purposes of implementing the RTI Act. The former chief information commissioner of Assam, among others, stated that legal help was sorely needed to prepare case backgrounds. Lack of adequate administrative support was identified as a major impediment in the working of Commissions. The need for permanent, competent staff, which is accountable to the ICs was clearly enunciated by commissioners across different commissions.

Though most commissioners felt that they had functional autonomy, the lack of financial autonomy of ICs was listed as a major constraint by almost all commissioners. They felt that financial delegation of powers to ICs needed to be expanded as commissions had to approach governments for sanctions for even small expenses. A common problem seemed to be that while commissions could

hire casual workers, for full time appointments, permission needed to be taken from the state government. Several commissioners stated that contract employees did not get salaries on time and even for small expenses, like computers, ICs needed to approach their respective governments. In Assam, an ex-commissioner gave the example of a legal advisor engaged for two months to prepare case backgrounds who was not paid as there was no budget available for his post. Some commissioners complained of lack of accountability of ad-hoc staff towards the ICs as their salaries came from the state government. It was also felt that lack of availability of funds with ICs for awareness generation among citizens was a major bottleneck.

Commissioners felt that often senior officials in public authorities were not sincere in implementing the RTI Act and were negatively disposed towards the law. They reported that PIOs were frequently changed and in states like Andhra Pradesh, very junior officials were appointed as PIOs. Commissioners, including the Rajasthan commissioner, felt that there was very little or no initiative by governments to train PIOs and officials of public authorities – who in fact urgently needed to be sensitized. They mentioned that often PIOs did not attend hearings at the ICs and sent their juniors instead. The lack of trained and committed PIOs led to an increased number of appeals and complaints reaching the commissions.

A frequently raised problem was the lack of effectiveness of the first appeal process. A commissioner in the CIC said that when a new FAA was appointed, there was no handing over of RTI cases from the previous FAA to the newly appointed one. Many commissioners stated that there was no accountability of first appellate authorities and therefore the first appeal provided under the law was effectively defunct, thereby unnecessarily increasing the burden commissions.

Almost all commissioners who were interviewed felt that a major problem was non-compliance by public authorities with the orders of the ICs. ICs had no agency of their own to ensure implementation of their orders. Commissioners in Andhra Pradesh said that in about 10% cases, there were complaints about non-compliance with the orders of the commission. According to them, since there was no system of checking whether there had been compliance with the IC's orders, there would be many more cases of non-compliance where the applicant did not file a complaint. Most commissioners felt that non-compliance with orders should be treated as contempt and some even suggested a need to amend the RTI law.

Some commissioners alluded to the problem of poor implementation of section 4 of the RTI Act. They stated that even the boards outside the PAs were not properly maintained – a fact borne out by this study (see chapter 7). Lack of pro-active disclosures by PAs led to a large number of RTI applications being unnecessarily filed by people seeking information, many of which finally reached the commissions as complaints or appeals.

The problem of inadequate infrastructure was raised by almost all commissioners. The commissioners of the CIC stated that it was important for the CIC to have a centrally located office building, with better access and parking facilities than the CIC offices had. Several commissioners pointed to the need for better facilities for people at the ICs like proper waiting rooms, drinking water, photocopying facilities, etc. In Assam, the lack of adequate infrastructure to hold interviews to hire people was mentioned as a problem. Commissioners also stated the need for modernization and computerization to ensure on-line filing of appeals and complaints and timely on-line disclosure of status of cases.

9.4 Discussion

Information commissions in India are the final interpreters of the RTI law and arbiters of decisions on what information is exempt. They are mandated by the RTI law to safeguard and facilitate people's fundamental right to information. The effective functioning of ICs is critical for citizens to realize their right to information as they are the only independent institutions in the RTI regime, and are vested with the responsibility of ensuring that public authorities comply with the provisions of the RTI Act which aims *"to promote transparency and accountability in the working of every public authority"*.⁹²

It is clear from results of the study that the performance of most ICs leaves much to be desired.

A distressing finding of the assessment was that ICs of Assam and Manipur had not been functioning since March 2014 and March 2013, respectively. It was also found that ICs of states like Rajasthan and Madhya Pradesh were not functional for over one year each, in the time period under review for the study.

The non-functioning of information commissions amounts to a violation of peoples' right to information as ICs are the ultimate adjudicators under the RTI law. In case of any denial of information by the public authority, the only recourse that citizens have under the RTI Act is to seek justice from the ICs. If commissions do not function, as is the case of the Assam and Manipur ICs, effectively justice cannot be dispensed to ensure citizens get the information they are legally allowed to access. Among other problems, non-functional ICs cause huge backlogs of appeals and complaints, as is evident in the case of Madhya Pradesh, which result in people having to wait for long periods of time to access information.

9.4.1 Composition of commissions

Sections 12(5) and 15(5) of the RTI Act lay out the eligibility criteria for the post of information commissions. "The ... Chief Information Commissioner and the ... 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." The Act, therefore, envisages that commissions comprise of commissioners from diverse backgrounds.

There has been much debate on the desirability of populating information commissions primarily with retired civil servants.

Many argue that civil servants know best what information is available with the government, where it is to be ferreted out from, and how best to do it. Therefore, they have an advantage over others when it comes to ordering governments to be transparent. Also, retired senior civil servants, especially those who have earlier headed state or Central Government departments, are likely to be in a better position to get the required support and assistance from the government. In the initial years it was also felt that as the RTI Act was a new and somewhat revolutionary measure, which the bureaucracy would potentially resist, and the fact that the commission might need to hand out penalties and admonishments, which the bureaucrat would resent, it might perhaps be prudent to initially have retired civil servants perform these unpopular functions till the RTI regime became more acceptable and the culture of transparency was internalized in the system.

⁹² Preamble of the RTI Act

On the other hand, there has been a very strong apprehension that civil servants are likely to have much greater sympathy and affiliation with their erstwhile colleagues than with the general public. It is possible that they might have a vested interest in protecting their past actions or those of their colleagues and friends still serving in the government. There has also been a concern that the ICs rather than being institutions housing men and women most suitable for the job, would be reduced to becoming post-retirement slots for civil servants.

The issue of who should be eligible to become an information commissioner became a matter of wide public debate when the Supreme Court of India passed a judgment in September 2012 in the *Namit Sharma vs. Union of India* case. Among other things, the apex court ruled that all orders of ICs must be passed by benches consisting two information commissioners, at least one of whom should be a judicial member – a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. The order was finally challenged by RTI activists and was recalled. The Court issued fresh directions stating that the government should make an effort to identify people from diverse backgrounds, other than retired civil servants, as mentioned in sections 12 and 15 of the RTI Act.

9.4.2 Transparency and accountability of commissions

For institutions that are vested with the responsibility of ensuring that all public authorities function transparently and adhere to the letter and spirit of the RTI Act, it would perhaps be fair to expect that information commissions lead by example.

Section 4 of the RTI Act requires commissions to proactively disclose information on their functioning and the details of decisions taken by them. However, the state of record maintenance by ICs and the poor state of proactive disclosure of information through websites leaves much to be desired. It was alarming to note that many ICs across the country stated that they did not even maintain data on the number of appeals and complaints received and pending in their commission. Not keeping track of basic, critical data like quantum of penalties imposed and compensations granted seems to be the norm rather than the exception.

To ensure periodic monitoring of the functioning of the commissions, section 25 obligates each commission to prepare a “*report on the implementation of the provisions of this Act*” every year which is to be laid before Parliament or the state legislature. The performance of a majority of the ICs in terms of publishing annual reports and putting them in the public domain is very dismal. Unless ICs significantly improve record maintenance, provide information proactively in the public domain, through regularly updated websites and publish annual reports in a timely manner, they will not enjoy the confidence of people. They will continue to evade real accountability to the people of the country whom they are supposed to serve. The guardians of transparency need to be transparent and accountable themselves!

9.4.3 Backlogs in the commissions

The levels of pendency in a majority of ICs are alarming, resulting in applicants having to wait for many months, even years, for their appeals and complaints to be heard. The huge backlog in the disposal of appeals and complaints by the commissions is one of the most critical indicators of poor implementation of the RTI Act in the country. For a person living at the margins, who perhaps needs government information the most, it is a daunting task to file an application seeking information and

follow up with an appeal or complaint to the IC in case of denial of requisite information. If there are inordinate delays in the commissions, as testified by many people, the law becomes meaningless for them in terms of ensuring their right to information.

There is a need to evolve an agreement on the number of cases a commissioner should be expected to deal with in a month. Given an agreement on the maximum time within which appeals and complaints should ordinarily be dealt with – hopefully not more than 45 days - the required strength of commissioners in each commission needs be assessed on an annual basis (see chapter 1 for detailed recommendations).

Box 10 - Commendable initiatives!

The SIC of Arunachal Pradesh is the only information commission that has defined a time frame for disposing appeals. Notification by the state government dated 15th September 2005, states that the Commission shall endeavour to dispose appeals within thirty days from the date on which the appeal was presented.

The Central Information Commission, in recognition of the need for speedy disposal, stipulated a norm in March 2011 that each single bench of the Commission will endeavour to dispose 3200 appeals/complaints per year (<http://cic.gov.in/CIC-Minutes/Minutes22032011.pdf>).

9.4.4 Imposition of penalties

The provision to allow for imposition of penalties under the RTI Act is widely seen as the clause that gives the law its teeth. Non imposition of penalties in clearly deserving cases by commissions sends a signal to the PAs that violating the law will not invite any serious consequences. This destroys the basic framework of incentives built into the RTI law and promotes a culture of impunity.

Informal discussions with various commissioners, both central and state, have over the years thrown up a host of reasons why they decline to impose penalties. In the first instance, soon after the RTI Act became effective, the most common reason was that as the Act is new, PIOs are still ignorant of its provisions and therefore it would not be fair to penalize them - even though it is a well-known legal principle that ignorance of law is not a valid defence.

In many cases, a warning, or even a stern warning, is given as if it is an allowable alternative to a penalty. In many cases the rationale for not imposing deserved penalty was that the PIO had acknowledged his/her mistake, and apologised and promised never to do it again!

Some commissioners have ideological problems with imposing penalties and are therefore in a sense conscientious objectors to the system of penalties. Others feel that imposition of penalties would make the bureaucracy hostile to the commission.

Another common justification assumes that many PIOs are over-worked and therefore it would not be fair to penalize them. Though demonstrable overwork, in a specific case, might be considered a reasonable ground for delay, in most cases there is neither the ability nor the effort to determine whether the PIO was actually overworked, but only a general assumption that all officials are overworked. And this is despite the fact that the law explicitly places the onus of proof on the PIO. Our study shows that on average, 38% PIOs spend less than 2 hours a week on RTI related work and 39% spend less than 5 hours a week (see chapter 8).

Clearly all the above reasons (and many more that are offered) are beyond the pale of law – yet they are the rule rather than the exception. The great reluctance on the part of Information Commissioners to impose penalties sends out a signal to PIOs that violation of the law will not result in erring officials

being penalized. This blunts the effectiveness of the commissions and exasperates applicants who seek information at a high cost and often against great odds.

9.4.5 Awarding compensation

Section 19(8)(b) of the RTI act empowers the information commissions to order the public authority to compensate the complainant for any loss or other detriment suffered as a result of violation of the provisions of the law. The power to award compensations, however, is neither being used widely nor effectively by the commissions. The provision has primarily been interpreted by information commissions to compensate the appellant for costs related to attending hearings and pursuing applications, where the information was being wrongly delayed or denied.

The power to award compensation can, in fact, be used creatively by information commissions to create pressure on public authorities to conform to provisions of the RTI Act, especially section 4 requirements for proactive disclosures. Various information commissioners have, from time to time, raised the issue that whereas they are empowered to penalize PIOs, they have no power to penalize public authorities that do not appoint PIOs, or do not make public the information that they are required to under section 4. Though this is correct and perhaps a weakness in the law, by insisting that PAs compensate complainants who were not able access information that should have been proactively accessible because the PA had failed to make it available, commissions could ensure that PAs started conforming to these and other provisions of the RTI Act.

The fact that the RTI Act does not prescribe any limit to the compensation awarded, as it does for penalties, makes this an even more powerful tool to ensure compliance with orders of the ICs.

9.4.6 Ensuring compliance with the orders of the ICs

Even though the orders of the ICs are legally binding under the RTI Act, non-compliance with directions of the ICs was a key problem highlighted by people and commissioners alike. In the public hearings held in Delhi, Assam and Rajasthan, several applicants stated that despite orders of the commission they had not been provided the requisite information nor paid the compensation due to them.



Public hearing organised as part of the assessment

This is one of the most critical challenges to the RTI regime. If the orders of the adjudicators of the law are not complied with, other efforts like speedy disposal of cases, levying penalties and awarding compensations, are of little or no value. Given the time, effort and resources required to get an order from the commissions, it is an absolute travesty of justice for ordinary citizens when orders of the commissions are not complied.

One of the reasons why this happens is that although the orders of the commission are legally binding, the law does not prescribe any penalty for non-compliance with the orders of the ICs. Perhaps, India can learn from the system followed in the UK, wherein the commission can issue enforcement notices that attract the same penalty as contempt of court, in cases of non-compliance with its directions (see Chapter 11).

However, even in the current system, commissioners can do much more than what they are currently doing to ensure compliance with their orders. All ICs must fix a time limit within which their orders have to be complied with. Where there is a lack of compliance by a PIO, automatically show cause notices should be issued for imposition of penalty and unless compliance follows in a reasonable time, penalty should invariably be imposed. For this to be possible, the cases must not be closed till compliance is confirmed or assumed because of no evidence to the contrary. In case of repeated non-compliance ICs must recommend disciplinary action against the PIO. Since ICs have powers to summon, they can issue summons to the HoD of the concerned PA who can be held responsible and asked why orders were not complied with (see chapter 1).

9.4.7 Addressing constraints faced by ICs

If ICs are to play the central role envisaged for them under the RTI Act, the reasonable constraints faced by information commissioners in discharging their duties effectively must be addressed. ICs clearly need to be given adequate resources and autonomy (both financial and administrative). Norms could be developed for budgets and staffing patterns of ICs, based on the number of cases to be dealt with by each commissioner, and other relevant state specific issues (see chapter 1).

10. NODAL AGENCIES

- *24 of the states and all seven union territories charge the same application fee as the Central Government - ₹ 10. Arunachal Pradesh and Haryana charge ₹ 50, and Gujarat ₹ 20. Though courts and legislative assemblies also have their own rules for fees, these are not being discussed here.*
- *Andhra Pradesh exempts applicants from paying any fee for applications filed with public authorities at the village level, ₹ 5 for other applications filed with mandal (sub-district) level, public authorities, and ₹ 10 for the rest.*
- *Seven states also charge a fee for first appeals and five of them also charge a fee for second appeals.*
- *The Central Government and all states and union territories charge ₹2 per page for providing photocopies of documents, except Arunachal Pradesh, which charges ₹ 10.*
- *The RTI law lays down that people coming from below poverty line (BPL) families would not be charged any fee. However, Karnataka and Chhattisgarh restrict this to a hundred pages and fifty pages of photocopies respectively, and Bihar to ten pages. In Madhya Pradesh and Uttarakhand, information can be accessed by members of BPL families free of cost only if the information is about their own family.*
- *Cash, demand drafts, bankers' cheques, and Indian postal orders are the most commonly accepted modes of payment for fee and other costs. Money orders are accepted only by Chhattisgarh.*
- *The Central Government has restricted the length of RTI applications to 500 words. Four states - Karnataka, Bihar, Chhattisgarh, Himachal Pradesh, and Maharashtra have restricted the length to 150 words per application. These states also insist that one RTI application can seek information only on one subject, and in Himachal Pradesh only about one calendar year.*

10.1 Introduction

This chapter seeks to describe and evaluate the role of appropriate governments and some of the competent authorities in the functioning of the RTI regime in India. Specifically, it seeks to evaluate the rules that they have formulated and assess their performance relating to the various other functions that they are required to perform.

The Central Government and all the state governments are “appropriate governments”, and they are all looked at in this study. The Central and state governments, the Supreme Court and all high courts, the Parliament, legislative assemblies and all union territories, also have a designated competent authority (s. 2(e) of the Act). The RTI Act designates as competent authorities for each of these institutions, the President, the governors, chief justices, speakers, and administrators appointed under article 239 of the Constitution, respectively.

The appropriate government has certain exclusive rule-making powers, under section 27(2)(d) and (e) of the RTI Act, relating to the salaries, allowances, and working conditions of the staff of the information commissions, and the procedures to be adopted by information commissions while deciding appeals. They have concurrent rule-making jurisdiction (s. 27(2) (a) to (c), (f)) with competent authorities for costs, fees, and other matters (s. 28(2) for competent authorities).

Competent authorities also have an important role to play in deciding whether otherwise exempt information can be disclosed because public interest so warrants (s. 8(1) (d) and (e)).

As the focus of this study is on governments and information commissions, and their interaction with the public in connection with the RTI Act, the functioning of only appropriate governments, and the competent authorities of the seven union territories appointed under article 239 of the Constitution, are being assessed.

10.1.1 Appropriate Governments

Section 2(a) of the RTI Act defines “appropriate government” to be:

“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;”

The Central Government and each of the state governments have, in turn, designated a department that functions as the nodal department and has the responsibility of servicing the RTI Act for that appropriate government. In the Central Government the designated department is the Department of Personnel and Training (DoPT), while in the state governments it is usually a department performing similar functions but known as the General Administration Department (GAD).⁹³

Section 27 of the RTI Act empowers the appropriate government to make rules under the RTI Act for various matters including fee chargeable for applications and for accessing information, salary and allowances payable to officers, and procedures adopted by the information commissions.

The appropriate government is also charged with the responsibility of advancing the “*understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under*” the RTI Act,⁹⁴ promote timely and effective dissemination of accurate information by public authorities about their activities,⁹⁵ and train public information officers and produce relevant training materials.⁹⁶

The appropriate government also has the responsibility of bringing out and updating guidelines relating to various matters including the object and process of the Act, the assistance and remedies available under the Act, provisions of voluntary disclosure, fees, and any other relevant information.⁹⁷

10.1.2 Competent Authorities

The RTI Act (s. 2(e)) defines competent authorities to be:

“(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;

⁹³ In the states of Nagaland, Tamil Nadu, Jharkhand, Manipur, West Bengal and Mizoram the nodal department is known as the Department of Personnel and Administrative Reforms.

⁹⁴ Section 26(1) (a) & (b).

⁹⁵ Section 26(1) (c).

⁹⁶ Section 26(1) (d).

⁹⁷ Section 26 (2) (3) & (4).

- (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;”

A competent authority is authorized to perform various functions under various provisions of the RTI Act,⁹⁸ but there is also an overlap as competent authorities are also authorized to make rules on costs and fee,⁹⁹ under the RTI Act, as are appropriate governments. Given the focus of this section, an effort was made to assess those functions of competent authorities that overlapped with those of appropriate governments, namely the framing of rules.

10.2 Methodology

In order to get copies of rules and other relevant documents from the various appropriate governments and competent authorities, RTI applications were filed with the Central Government, 27 state governments (the state of Jammu and Kashmir was not part of the study, as it has a separate RTI Act), and seven union territory administrations, requesting for copies of rules and other relevant documents,¹⁰⁰ including circulars, notices, guidelines and office memoranda. Since in Karnataka,¹⁰¹ Chhattisgarh,¹⁰² Maharashtra¹⁰³ and Bihar¹⁰⁴ there was a word limit of 150 words per RTI application, three applications each were filed in these four states. In Himachal Pradesh¹⁰⁵ where an RTI application must be under 150 words and can seek information relating to only one year, eight applications were filed, two for each of the four years for which information was required. In some other states, though one application each was filed, this was forwarded under section 6(3) to two or more departments. Hence, in total, 81 applications were dealt with.

Full information was received from 84% of the PIOs, and part information was received from another 6%, though not all of it in time. A little over 30% of the information received was sent in time, and the remaining almost 70%, was late. About 65% of the information received was on the basis of the application filed, and the remaining 35% was as a result of a first appeal.

Finally, we were able to get most of the required information for all the states and union territories, as the gaps were mostly filled in by accessing various relevant websites, including the very impressive websites of YASHADA, Pune,¹⁰⁶ and the Commonwealth Human Rights Initiative, Delhi.¹⁰⁷

As far as costs and fees are concerned, in our analyses of the rules of various appropriate governments and competent authorities, we have taken the rates prescribed by the Central Government as the norm, and all deviations from the norm have been highlighted.

⁹⁸ Section 8(1) (d) & (e) empower competent authorities to disclose information which might otherwise be exempt because of copyright or a fiduciary relationship, where greater public interest so warrants the disclosure.

⁹⁹ Section 28.

¹⁰⁰ See annexure 6 for copy of the RTI application.

¹⁰¹ Notification no. DPAR 14 RTI 2008 dated 17th March 2008.

¹⁰² Devasher M. & Rodrigues C., Your guide to using the Right to Information Act, 2005. Commonwealth Human rights initiative, New Delhi, 2012, p.84.

¹⁰³ Rule 2, Maharashtra Right to Information Rules, 2012, Notification no. CRTI/2009/C.R. 398/09/VI dated 16th December 2012.

¹⁰⁴ Rule 4, Bihar Right to Information Rules, 2009, S.no. 8/su. A. -15-02/2008 KA. 12522/Right to information dated 19th November 2009.

¹⁰⁵ Rule 3 (2), Himachal Pradesh Right to information Rules, 2006 notification no. Per (AR) F(7)-2/98-Vol I dated 21st January 2006.

¹⁰⁶ http://www.yashada.org/2012/index.php?option=com_content&view=article&id=163&Itemid=134

¹⁰⁷ <http://www.humanrightsinitiative.org/programs/ai/rti/rti.htm>

10.3 Findings

10.3.1 Rules relating to fees and costs

Fee for filing applications

The RTI Act provides for the charging of a fee for filing RTI applications. Section 6(1) of the Act specifies that:

“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.”

However, the Act also prescribes that the fee shall be reasonable and that no such fee shall be charged from persons who are below the poverty line¹⁰⁸ (section 7(5)). Section 7(6) further exempts those who do not get information in time from paying any fee.

The quantum of fee to be charged is laid down in the rules made by appropriate governments and competent authorities under sections 27 and 28 of the RTI Act, respectively.

Though there is no objective test of reasonableness, the rules made by the Central Government prescribe ₹ 10 as the application fee. This has, for the purpose of this study, been taken as the norm. This appears to be in keeping with expectations of the Government of India which, in a notification NO.F. 1/5/2011 –IR dated April 26, 2011 has asked all appropriate governments and competent authorities to follow the pattern of fees and costs prescribed by the Government of India.

Most (24) of the states and all (7) of the union territories have replicated the Central Government rules and prescribed a “reasonable” application fee of ₹ 10. However, there were three deviants.

In Arunachal Pradesh, a relatively poor state, the application fee for most types of applications has been fixed at ₹ 50. However, for information related to tenders, bids, quotations, or business contracts the application fee is ₹ 500.¹⁰⁹ Haryana has also prescribed a fee of ₹ 50¹¹⁰ for all RTI applications, while in Gujarat one needs to pay ₹ 20.¹¹¹

Refreshingly, in one state – Andhra Pradesh – the fee was even more reasonable than the norm. According to the rules the application fee is ₹ 10 at the state and district levels, ₹ 5 at the *mandal* (sub-district) level, and free of cost at the village level.¹¹²

Fee for appeals and complaints

The RTI Act provides for two levels of appeals¹¹³ against decisions (or inaction) of the public information officer. If there is no response within the prescribed time period, or if the applicant is not satisfied with the response, the applicant can file a first appeal with an officer within the concerned public authority. If the applicant does not receive a response to the first appeal within 45 days of filing

¹⁰⁸ Only 19 of the 28 states and all the 7 UTs explicitly mention this exemption in their rules. However, as it is a part of the Act, presumably all the states and UTs are honouring it.

¹⁰⁹ Arunachal Pradesh Right to Information rules, 2005 No.OM -43/ 2003 dated 15th September, 2005.

¹¹⁰ Haryana RTI Rules, 2009 Ref. No. So.99/C.A. 22/2005/S.27/2009 dated 21st December 2009.

¹¹¹ Gujarat Right to Information Rules, 2010 Ref. No. G.S./21/2010/VHS/1005/2664/RTI Cell dated 22nd March 2010.

¹¹² Andhra Pradesh Right to information (Regulation of fee and cost Rules) 2005 Ref. no. G.O.Ms NO. 454 dated 13th October 2005.

¹¹³ Section 19.

it, or is not satisfied with the response, then the applicant can file a second appeal with the relevant information commission.

The applicant can also file a complaint with the relevant information commission for the violation of provisions of the RTI Act¹¹⁴ and demand that a penalty be imposed on the erring official and compensation be paid to the applicant for¹¹⁵ “any loss or other detriment suffered”.

Though there are specific provisions in the RTI Act that lay down the charging of a fee for an RTI application, as described in the earlier section,¹¹⁶ there are no

provisions specifying that a fee should be charged for first or second appeals, or for complaints. Nevertheless, section 27 and 28 empower the appropriate governments and the competent authorities respectively to make rules about “any other matter which is required to be, or may be, prescribed”. Further, section 2(g) defines “prescribed” as “prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be”.

Consequently, as the RTI Act does not specifically prohibit the imposition of a fee for appeals and complaints, this can at best be considered a grey area where appropriate governments and competent authorities have some discretion.

Table 10.2: Fee for second appeal	
<i>Name of the state</i>	<i>Fee (₹)</i>
1. Odisha	25
2. Maharashtra	20
3. Sikkim	100
4. Chhattisgarh	100
5. Madhya Pradesh	100

Though the Central Government and most (21) of the states and all (7) of the UTs do not charge a fee for first appeals, seven states do (see table 10.1 for details). The fee charged by these seven states varies from ₹ 10 (Bihar)¹¹⁷ to ₹ 100¹¹⁸ (Sikkim).

Though the Central Government and the UTs have not made a provision for charging any fee for filing a second appeal, five of the 27 states have prescribed a fee (see table 10.2). Fortunately, none of the states or UTs have instituted a fee for complaints.

¹¹⁴ Section 18.

¹¹⁵ Section 19(8) (b).

¹¹⁶ Sections 6(1), 7(5) & 7(6).

¹¹⁷ State level RTI: Bihar, Commonwealth Human Rights Initiative website.

http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=489:bihar&catid=90:india-states&Itemid=417

¹¹⁸ Sikkim state Right to information (Regulation of fee, cost and miscellaneous) Rules, 2005 ref. no. 230/Gen/DOP dated 22nd December 2005.

Cost of photocopies

For acquiring photocopies of documents, or information in an electronic medium, or for inspection of documents or files, or for getting samples of material from the public authorities, a fee is chargeable, as prescribed under section 7(3) of the RTI Act. As per the rules of the Central Government the amount of ₹2 per page is chargeable if the applicant asks for an A4 size copy of any document. If the information is asked for in a larger format then the actual cost of photocopying is chargeable. If we take the Central Government rates as the norm, only Arunachal Pradesh deviates, charging ₹10 per page for photocopying. Chhattisgarh has laid down that only 50 pages of information would be provided (at the payment of ₹ 100). If you want more information than that, then the PIO can ask you to come and inspect the documents.

It has been specified in the Act – section 7(5) – that the citizens belonging to the BPL category can get information free of charge. Rules in 19 states are in compliance with this provision of the Act. These states have clearly spelled out that the information asked for is provided free of cost to the BPL category. However, five states have restrictions on providing documents free to citizens living below the poverty line (BPL). Karnataka¹¹⁹ provides only 100 pages, Chhattisgarh¹²⁰ 50 pages (if it related to the BPL family), and Bihar¹²¹ 10 pages, free of cost. In Uttarakhand¹²² and Madhya Pradesh,¹²³ BPL applicants are provided free documents only if the information asked for relates to them or their family. If a BPL applicant asks for information about another BPL person or family, then 50 pages are provided free of cost, after which the prescribed full cost is payable.

Cost of obtaining information in electronic form

The RTI Act specifically allows the seeking of information in an electronic format.¹²⁴ For seeking information on a CD or in any other electronic form, a reasonable fee is envisioned under section 7(5) of the RTI Act. Rules of the Central Government, which are being taken as the norm, prescribe a fee of ₹50 for information in electronic form. 23 states and seven UTs conform to this norm. Three states, namely Andhra Pradesh, Haryana and Himachal Pradesh, prescribe a fee of ₹100 for information on a CD. However, Mizoram and Uttarakhand prescribe a fee of ₹30 and ₹20 respectively.

Charges for inspection of documents

Section 2(j) (i) of the RTI Act includes the right to inspect documents under the definition of “right to information”. Central Government rules lay down that no fee is chargeable for the first hour of inspection, but the applicant needs to pay ₹5 for the next hour and a fraction thereof.

Generally the state rules are at par with the standards of the Central Government. But some states like Gujarat, Haryana and Kerala do not charge any fee for the first hour of inspection and then a fee ranging from ₹10 to ₹20 for subsequent half hours and fractions thereof. There are also states like Tamil Nadu, Tripura, Sikkim and Uttarakhand that allow inspection of documents free of cost for the

¹¹⁹ Karnataka Right to Information (amendment) Rules, 2007, notification no. DPAR 39 RTI 2007 dated 11th November 2007.

¹²⁰ Chhattisgarh Right to Information rules (fee and charge), 2007 ref. no. F2-10/2006/1/6 dated 12 October 2006.

¹²¹ Bihar Right to Information (amendment) Rules, 2009 notification no. 8/su. A. -15-02/2006 Ka. 12522/RTI 2005 dated 19th November 2009.

¹²² Uttarakhand Right to Information Rules, 2012 notification no. 118/XXXI (13) G-65 (su. A.)/2012 dated 17th January 2013.

¹²³ Madhya Pradesh Right to Information Rules (fee and appeal) 2005 Amendment no. F 11-37-2005-1-9 dated 10th March 2008.

¹²⁴ Section 2(j) (iv).

first hour like any other state or UT, but the applicant needs to pay a fee of only ₹5 per hour after that. The cost of inspection of documents in the UT of Daman and Diu is ₹100 per day (maximum of 3 hours) and if the information relates to a decade or more, preceding the date of application, an additional fee of ₹25 per hour is charged!

Mode of payment of fee

Appropriate governments and competent authorities have specified, in their rules, the modes of payment acceptable to them. The payment of the various fees and charges can be made through numerous modes. These include cash, demand draft, Indian postal order, banker's cheque, treasury challan, etc.

Table 10. 3: MODE OF PAYMENT FOR APPLICATIONS												
No.	STATE/UT	Cash	DD	BC	IPO	TC	Bank receipt	Non judicial stamp	Pay order	Court fee stamp	Electronic stamping	Money order
1.	A&N	x	x	x								
2.	AP	x	x	x	x							
3.	ARU		x	x	x	x						
4.	ASS	x	x		x			x				
5.	BIH		x		x			x			x	
6.	CHA	x	x	x	x							
7.	CHH	x				x		x				x
8.	DEL	x	x	x	x						x	
9.	DND	x	x	x	x							
10.	DNH	x	x	x								
11.	GOA	x	x	x	x			x				
12.	GUJ	x	x		x			x	x	x	x	
13.	HAR	x	x		x	x						
14.	HP	x	x		x	x						
15.	JHA	x	x	x								
16.	KAR	x	x	x					x			
17.	KER	x	x	x		x			x			
18.	LAK		x	x	x							
19.	MAH	x	x	x						x		
20.	MAN	x	x	x	x							
21.	MEG	x	x	x								
22.	MIZ	x	x	x	x							
23.	MP					x		x				
24.	NAG	x	x	x								
25.	ORI	x				x						
26.	PUD	x	x	x								
27.	PUN	x	x	x	x							
28.	RAJ	x	x	x								
29.	SIK	x	x	x	x							
30.	TN	x	x	x								
31.	TRI	x			x	x						
32.	UP	x	x	x	x							
33.	UTT	x	x	x	x	x		x				
34.	WB		x	x	x			x				
	Total	29	30	25	20	9	0	8	3	2	3	1

Cash and demand draft are the most widely accepted modes of payment, which are accepted in 29¹²⁵ and 30 states and union territories, respectively. The next most widely accepted modes of payment are banker's cheques and postal orders, which are accepted in 25 and 20 states/UTs respectively. Other options like treasury *challans*, non-judicial stamps, pay order etc. are not commonly accepted modes of payments (see Table 10.3)

However, it was also observed that the rules were not always up to date or were not always adhered to. Therefore, many of the states/UTs that did not indicate that Indian postal orders were acceptable, actually accepted them when sent with the RTI applications sent out as a part of this study. For example, rules made by Chhattisgarh government did not list IPOs as an acceptable mode of payment for filing an application, but the website¹²⁶ of the Chhattisgarh state information commission states that applicants can use IPOs as a mode of payment while filing an application. For most states there was no notification for the modes of payment required to pay fees for first and second appeals, and it was assumed that the same modes of payment were applicable as prescribed for applications. However, Chhattisgarh was an exception and prescribed, vide notification of 2011,¹²⁷ modes of payment for paying fees for appeals. Uttarakhand¹²⁸ and Goa¹²⁹ provided the maximum number of options to citizens. In Uttarakhand, one can deposit ₹10 via cash, demand draft, banker's cheque, IPO, treasury *challan*, and non-judicial stamp. In Goa ₹10 can be submitted by cash, demand draft, banker's cheque, IPO and non-judicial stamp. In contrast, Kerala only accepts cash, demand draft, banker's cheque or a treasury *challan*, nothing else!

10.3.2 Rules relating to applications and appeals

Documents to accompany applications

The RTI Act has tried to make it easy for citizen to access information held by the public authorities. There are no formats or forms prescribed in the law for filing applications and apart from the applicant's name and contact address, no other information is required to be submitted along with an RTI application. In fact, section 6(2) of the Act specifies:

"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."

However, section 3 of the RTI Act guarantees the right to information only to citizens and some appropriate governments and competent authorities have made it mandatory to provide proof of the applicant's identity, while filing an RTI application. Goa,¹³⁰ Gujarat,¹³¹ Odisha¹³² and Sikkim¹³³ are the

¹²⁵ This data has been compiled from the rules of different states.

¹²⁶ http://www.siccg.gov.in/How_to_Apply_Appeal.htm

¹²⁷ Rule 1, Chhattisgarh Right to information (appeal) rules, 2006, notification no. F- 2-4/2010/1-suapra dated 4th November 2011.

¹²⁸ Uttarakhand Right to Information (amendment) Rules notification no. 165/MU./XXXI (13)G-2(2)/2006 dated 31st March 2006.

¹²⁹ Department of Information and Publicity, Government of Goa, Guide on Right to Information, p.14.

¹³⁰ Department of Information and Publicity Circular no. DI/INF/RTI/2013/3786 dated 30th October 2013.

¹³¹ Gujarat Right to Information Rules, Op .cit. Rule 7.

¹³² Mentioned in Form A relating to Rule 4 (1) of the Orissa Right to Information Rules 2005 dated 1st October 2005 Ref. no. S.R.O.No.477/2005.

¹³³ Sikkim state Right to information (Regulation of fee, cost and miscellaneous) Rules, Op. cit.

four states that insist on this. Further, state rules of Goa¹³⁴ and Gujarat¹³⁵ allow the PIO to ask for proof of citizenship if the PIO is unsure of the nationality of the applicant.

TABLE: 10.4 Type of BPL proof to be attached with application		
No.	State	Type of Proof
1.	A&N	Copy of BPL certificate
2.	ARU	Copy of BPL certificate
3.	BIH	Copy of BPL Card
4.	CHA	Copy of BPL certificate
5.	DEL	Copy of BPL certificate
6.	DND	Copy of BPL certificate
7.	DNH	Copy of BPL certificate
8.	GOA	Copy of BPL card
9.	GUJ	Copy of BPL certificate or BPL card
10.	HP	Copy of BPL certificate
11.	KAR	Copy of BPL card
12.	LAK	Copy of BPL certificate
13.	MEG	Copy of BPL certificate
14.	MP	Copy of BPL certificate
15.	ODI	Copy of BPL Card
16.	PUD	Copy of BPL certificate
17.	SIK	Copy of Subject certificate
18.	UTT	Copy of BPL card

Section 7(5) of the RTI Act exempts applicants who are below the poverty line from paying any fee or costs. However, some proof is required if this exemption is to be claimed. 18 states and UTs explicitly mention that applicants claiming exemption because they are from below the poverty line must provide documentary proof in the form of a BPL certificate or a BPL card. At least in one state, Himachal Pradesh, there was a restriction on giving free information to just BPL ration card-holders, and it was specified that only those who had a certificate from the appropriate state government authority are entitled to this¹³⁶. The list of these states/UTs with the type of proof required is given in Table 10.4.

10.3.3 Documents to accompany appeals

Most states/UTs specify in their rules a list of documents to accompany every second appeal, namely:

- (i) self-attested copies of the orders or documents against which the appeal is being preferred;
- (ii) copies of documents relied upon by the appellant and referred to in the appeal; and

(iii) an index of the documents referred to in the appeal.

BOX 10.1 - Goa Case Study

As part of the study, an RTI application was filed with the Department of Information and Publicity, Goa, from where a reply was received that referred to notification No. *DI/INFIRTHI2013/3786* dated 30th October 2013. The said notification stated that all the PIOs are required to satisfy themselves that the applicant is a citizen of India. The applicant may be asked to give a declaration on the application that he/she is an Indian citizen. Accordingly, a new application was filed with the required declaration.

In response a reply was received from the PIO asking for a “sworn affidavit” declaring the applicant a citizen of India. The earlier mentioned notification did state that if the PIO, even after receiving such a declaration, still had doubts, he/she could ask for a copy of the passport, elector’s photo identity (EPI) card or any other official document, including a sworn affidavit, to the PIOs satisfaction so as to comply with the above statutory requirement. However, the notification also stressed that this shall not be used as a means to deny information or cause inconvenience to the applicant. Despite this, the PIO refused to provide the asked for information unless the very inconvenient “sworn affidavit” was prepared, sworn and sent.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ HP Government, Administrative Reforms Organisation circular No. PLR (AR) L (5)-4/2006, dated 10th November 2008.

Though we did not find an explicit mention of this in any of the rules, reportedly most ICs demand three copies of documentation while filing appeals or complaints.

It was observed that 23 state/UT rules require that documents being attached with a second appeal must be verified by the applicant. Also state rules of 21 states and union territories require that these documents should be properly indexed.

Interestingly, Arunachal Pradesh is the only state that has set a time limit in its rules for its state information commission to dispose appeals — by a notification¹³⁷ dated 15th September 2005. This requires that the state information commission shall acknowledge the receipt of an appeal and after giving the applicant an opportunity of being heard shall endeavour to dispose it off within thirty days from the date on which it is presented.

Unfortunately, even the Central Government and the CIC has not notified any such time limit.

Restrictions on applications

Four states: Karnataka,¹³⁸ Bihar,¹³⁹ Chhattisgarh¹⁴⁰ and Maharashtra¹⁴¹ have restricted the length of an RTI application by imposing a limit of 150 words per application. These states also insist that one RTI application can seek information only on one subject. Himachal Pradesh¹⁴² has, in addition to word and subject restrictions, imposed the additional restriction that one RTI application can only seek information relating to one calendar year.

The Central Government has notified a length limit of 500 words for RTI applications, but forbidden PIOs from returning applications just because they are over 500 words¹⁴³.

BOX 10.2 - Case Study: Himachal Pradesh

An application filed for this analysis (copy at annexure 6) asked for copies of certain documents from 2008 - 2013. The application was returned to us by the government of Himachal Pradesh asking us to file an application that related to one subject only and covering a time period of one year only. Fresh applications were filed by us keeping in mind these instructions. However, instead of one application now we had to file ten applications to seek the required information from the state government. The period for which information was sought was indicated as the financial year (e.g. 2010-11).

After a few days we received another letter informing us that all the freshly filed applications were also rejected. The PIO now wanted us to seek information for a calendar year, and NOT a financial year. Therefore, we again had to submit 10 new applications with the year mentioned as 1st January 2010 to 31st December 2010.

10.3.4 Rules relating to penalties and compensation

The Rules received from states relating to appeals and IC procedures mostly provide rules relating to hearing of appeals, appearance of the parties, and the decision of the commissions. The rules are almost identical for all states. Most states have not provided any particulars relating to imposition of penalties and compensation. There are only five states that specifically mention penalties in their

¹³⁷ Department of Administrative reforms Notification no. OM43/2003 dated 15th September 2005.

¹³⁸ Karnataka Right to Information (amendment) Rules, *Op. cit.*

¹³⁹ Bihar Right to Information (amendment) Rules, *Op. cit.*

¹⁴⁰ Chhattisgarh Right to Information rule 2009, No. 2-10/2008/1-su.a.pra dated 15 June 2009, Rule 3.

¹⁴¹ Maharashtra Right to Information Rules, *Op. cit.*, Rule 2.

¹⁴² Himachal Pradesh Right to information Rules, *Op. cit.*

¹⁴³ DoPT, GS.R.603(E).— 31st July, 2012- <http://cic.gov.in/CIC-Notifications/RTIRules2012.pdf>

respective rules. State rules of Madhya Pradesh¹⁴⁴ lay down that penalties should be deposited with the state information commission within a month from the date of the order, via cash, banker's cheque, or demand draft. Also, state rules of Uttarakhand¹⁴⁵ specify that compensation and penalty should be collected within after three months and within six from the date of the order regarding the same. The PA should inform the state information commission about the recovery and the penalty amount should be deposited with the exchequer.

10.3.5 Notifications and Memoranda

One of the major functions of appropriate governments and their nodal agencies is to issue notifications and office memoranda to public authorities in order to ensure proper implementation of the various provisions of the RTI Act. Accordingly, copies of such circulars and memoranda were accessed by filing RTI applications. Generally speaking, most of the state governments forwarded the circulars received from the government of India. The Department of Personnel and Training, Government of India, has published a volume of circulars issued by them.¹⁴⁶ This volume, dated October 2013, has copies of 50 office memoranda and notifications issued by them under 17 heads:

1. Designation of PIO/APIO/FAA, nodal points for receiving RTI applications and expectation from PIO
2. Payment of fee and cost
3. Deemed CPIO
4. e-IPO & online filing of RTI applications
5. RTI Cell
6. Transfer of applications
7. Implementation of various provisions of the Act
8. Clarification regarding 'Information' to be provided
9. Spreading awareness
10. Disposal of first appeal
11. Maintenance of records
12. Suo-motu disclosure
13. Disclosure of file notes, ACRs, personal information, third party information etc.
14. Can 'reasons' be asked under RTI Act
15. Issues relating to Information Commissioners
16. Supreme court judgement regarding advice/opinion
17. RTI Rules

10.4 Discussion

10.4.1 Charging of fee

There has been much debate in India and elsewhere on whether there should be any fee chargeable for filing an RTI application. It has been argued, and with some merit, that considering that the right to information is a fundamental human right, why should people have to pay for exercising this right. Further, in countries like India it has been argued that forcing people to pay even a nominal fee might

¹⁴⁴ Madhya Pradesh Right to Information Rules (fee and appeal) 2005 Amendment, Op. cit., Rule 3(2).

¹⁴⁵ Uttarakhand Right to Information Rules, 2013, Government of Uttarakhand, GAD, No. 2132/XXXI (13) G65 (Suchana Ayog)/2012, Dehradun, dated 28th June, 2013. Rule 11(e). Available at: <http://cm.uk.gov.in/pages/display/1185-the-uttarakhand-right-to-information-rules2013>

¹⁴⁶ Compilation of OMs & Notifications on Right to Information Act, 2005, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. October 2013.

be unfair, given the very low income levels and the fact that very often the right to information is most desperately needed by those who are the poorest and most disempowered.

However, despite the obvious merit of this argument, strategically there are many advantages in imposing a reasonable, even nominal, fee while accepting an RTI application. For one, government systems are historically geared to issue receipts and acknowledgements while receiving payments. The same is not true when they receive applications, letters, requests, petitions, etc., which they do in large numbers and most of which remain unacknowledged and perhaps never acted upon. Therefore, where it is critical that an RTI application is received against a dated acknowledgement, perhaps the most effective way of achieving this is to accompany it with some payment.

Also, the people of India are used to getting a receipt for any payment while most of them have learned not to expect any acknowledgement for letters and other documents. Therefore, if a fee was involved, it would be much easier to persuade the people of India to insist on getting a formal dated acknowledgement while submitting an RTI application.

Whereas the misplacing or loss of a paper within the government system would not attract any criminal liability, where payments are involved if they are not properly accounted for they attract criminal proceedings. Therefore, where fees are paid and receipts issued, it would be much easier to ensure that the various government departments kept a better and more accurate track of the RTI applications received and processed by them.

Besides, the applicant would also have a greater stake in pursuing an RTI application if she has paid some fee for it. There would then be an expectation that this fee should be redeemed by getting a response. There is also greater likelihood that if such a response was not forthcoming the applicant would complain and appeal to the various appellate authorities. This is essential to ensure that the RTI system remains robust. If a majority of the applicants, when they did not receive a response or an appropriate response to their RTI applications, abandoned the matter and did not go for an appeal or complaint, then this would encourage the public information officers to ignore the RTI applications, secure in the belief that the probability of the applicant bringing the matter to the notice of an appellate body and making them susceptible to a penalty or disciplinary action, was very small.

All in all, while drafting the RTI Act in India there was consensus that for the reasons listed above, a fee should be chargeable for an RTI application, though such a fee should be reasonable. Acknowledging the fact that a significant proportion of the applicants might be so poor that even a reasonable fee might be an unreasonable hardship, the law exempts those who are below the poverty line from paying any fee.

It was also thought that as one must encourage the filing of first and second appeal where information has not been appropriately and adequately provided by the public authority, perhaps it was better not to impose fee at the appellate level. Therefore, the law and the Central Government rules do not have any fee for the first or second appeal. However, perhaps as an oversight, the law did not specifically prohibit the imposition of fee for the first or second appeal and, as we have seen in the preceding sections, some appropriate governments' incompetent authorities have imposed such fees.

What is a reasonable fee? This will remain a difficult question to answer. In a country where perhaps 20% to 30% of the population lives on less than ₹ 30 per day per head, asking them to pay even ₹ 10 (which is the reasonable fee laid down by the Central Government) could mean that they have to

forego a meal every time they have to file an RTI application. Of course, technically all these people should be classified as being below the poverty line, and therefore be exempt from paying any fee. However, it is a well-known fact that many of the poorest do not have the official documents required to reap the benefits of existing below the poverty line, and they might well want to use the RTI Act to find out why they have not been classified and documented as being below the poverty line!

All said and done, India has done well to both impose a reasonable fee for the filing of RTI applications and to exempt those below the poverty line from paying any fee. Most states and competent authorities have followed the example of the Central Government and prescribed ₹ 10 as the application fee. Unfortunately, some states, and these include some of the poorest states, have for reasons not obvious to the public, decided to charge a higher fee which is clearly unreasonable.

Most states and competent authorities have followed the example of the Central Government and charge ₹ 2 per page for providing a photocopy of the standard A4 size. The cost of photocopying is significantly less, and the ₹ 2 charged per page is meant to defray other costs so that public authorities do not feel unnecessarily burdened. Unfortunately, there is a problem as the accounting procedures of most government offices do not allow the direct use of any revenue received. Therefore, all the money received for photocopying has to be credited to the consolidated funds of the government and is therefore not available to the PIO to pay for photocopying charges. This has led to serious problems especially in the rural and semirural areas where PIOs do not have funds available to meet with even modest requests for photocopies, and are prevented from utilising the cost paid by the applicant, as this has to be deposited into the treasury.

10.4.2 Applications and appeals

By and large most states and competent authorities have kept the applications and appeals process easily accessible to the public. Unfortunately, a few states and even the Central Government have imposed restrictions on the number of words in an RTI application. Such a restriction seems to be an outcome of the mistaken belief that a large number of RTI applications were very lengthy and therefore wasted the time of the PIO. Repeated assessments involving the actual analysis of a random sample of RTI applications submitted to various public authorities across the country, one done in 2009 and the second one a part of this very study, have established beyond a reasonable doubt that the average length of applications is below the 150 words that some of the state governments have prescribed as the outer limit, and well below the 500 words limit prescribed by the Central Government. There are, of course, a few applications which are very lengthy and many of these are unnecessarily lengthy. However there are certainly not enough of these to justify the imposition of this limitation which, considering it is not allowed for in the RTI Act, can be considered illegal.

Another restriction imposed by some states is the requirement to establish one's nationality. Though it is correct that the RTI Act recognises the right to information for only citizens of India, it is unfortunately also a sad fact that a majority of the citizens of India do not have passports or other documents that could easily establish their citizenship. These are mostly the poorer and marginalised segments of society and by imposing a necessity to provide such documents, the few states that have done this are effectively excluding their poor from using the RTI Act.

It is not clear why this right is sought to be restricted only to the citizens of India, and why this is in any case important. Most of the transparency laws, especially in the western countries, are open to everyone. In any case, if a foreigner wants information, she can always ask an Indian friend to seek it

out for her, therefore it is not clear how this restriction serves any public purpose. It must also be remembered that under the RTI Act you cannot access sensitive information that could threaten the security of the country. Therefore, it would be best to drop this restriction so that people don't unnecessarily get harassed (see Box 10.1 above for our Goa experience).

The restriction, by some states, that an application can seek information about only one subject, is essentially a non-starter. No one can define what a single subject is in a manner that would be understandable and acceptable to everyone, or even comprehensible to most. On the one hand, the whole of the universe and all it contains is one subject, and equally, each separate atom or molecule can be a subject. Is the Government of India one subject? If not, how many is it? Therefore, such rules only give arbitrary powers to PIOs to reject applications, or at the very least harass applicants, often without clearly or fully understanding why any two questions are about two subjects or about one.

10.4.3 Notifications and memoranda

Whereas it is the function of appropriate governments to issue such memoranda and notifications, it becomes a problem when these start causing confusion. This has, unfortunately, been happening off and on as various appropriate governments, but especially the Department of Personnel and Training, Government of India, is in the habit of issuing letters that give advice which goes beyond the law or seeks to interpret the law: a function that only the information commissions and the courts of law can perform. In some cases they even contradict these authorities. In one well known case the DoPT insisted on circulating and maintaining on its website the opinion that file notings could not be accessed under the RTI Act even after the Central Information Commission had passed orders to the contrary. It took threats of direct action and many months before the DoPT was willing to remove this ill-advised advice.

While examining the OMs and notifications issued by the DoPT¹⁴⁷ it became clear that some of them went beyond what one would already understand and accept to be the role of an appropriate government. A few of the more problematic circulars are described and discussed below.

Section 7(9) of the RTI states that:

"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."

The stress here is that the public authorities must ordinarily provide information **in the form in which it is sought**, except where any one of the two mentioned caveats comes into play.

The DoPT, vide its Notification no. 11/2/2008-IR dated 10 July 2008, captioned "Clarification regarding form in which information should be supplied", has stated that:

"Section 7(9) means that if the information sought in the form of photocopy then shall be provided in the form of a photocopy, if it is asked in the form of floppy then should be provided in the form of a floppy. The PIO is not required to reshape into the proforma as asked by the applicant. The information should be provided in the form as held by the PA..."

¹⁴⁷ Ibid

The DoPT, by this notification, has replaced the RTI law's thrust of providing information "***in the form in which it is sought***" with "***in the form as held by the PA***". This is not only a violation of the law but well beyond the jurisdiction of the DoPT, which is seeking to amend a law passed by Parliament through an office circular.

It also reverses the thrust and spirit of the relevant section of the RTI Act. The original act sought to put the needs of the applicant first and demanded that ordinarily public authorities should respond to these needs unless *it disproportionately diverts their resources or threatens the safety or preservation of the record itself*. The DoPT has reversed that and made the convenience of the public authority paramount, and without any conditions or qualifications.

The analysis of 987 RTI applications done for this study show that more and more PIOs are avoiding providing the sought for information and documents by either (illegally) asking you to inspect the records personally, even if you are living thousands of kilometres away in another part of the country, or referring you to a website without either verifying whether you have access to the web, or whether you have the skills or inclination to go there.

In another circular (No.17/2009-IR dated 15th June, 2009) the DoPT, Government of India, makes a reference to a writ petition (No. A19 of 2007) in the case of Dr. Celsa Pinto vs. Goa State Information Commission in the High Court of Bombay at Goa. The DoPT states:

"The High Court of Bombay at Goa in the above referred case has held on 3.4.2008 that the term 'information' as defined in the Right to Information Act does not include answers to the questions like 'why'."

It seems surprising that instead of challenging such an order, which states that "The definition of information cannot include within its fold answers to the question "why" which would be same thing as asking the reason for a justification for a particular thing", the DoPT has chosen to publicise this order to jurisdictions far beyond those of the Bombay High Court at Goa.

The fact is that the question "why" is equally commonly used to ask for a reason or basis for action or inaction, and for a decision or a lack of one. Clearly these are critical queries that citizens must be permitted under the RTI Act if they are to make sense of the workings or otherwise of governments, and for governments to answer if they are to even begin to be answerable to the people. In fact, our analysis of RTI applications, as a randomized sample from various states and the Central Government, has shown that 57% of the RTI applications sought information about decisions or the lack thereof, and another 41% asked about actions taken or proposed to be taken. In fact, 13% directly asked for the basis of decisions (and many asked for all of these).¹⁴⁸

Also, section 4(1) (d) of the RTI Act specifically requires public authorities to proactively "*provide reasons for its administrative or quasi-judicial decisions to affected persons*". If nothing else, this clearly establishes that the Parliament not only wanted the government to provide to the people of India reasons for its decisions, it wanted the government to do so even without being specifically asked. How, then, can the RTI Act be interpreted to mean that reasons ought not to be supplied even when asked for!

¹⁴⁸ See table 5.4 in chapter 5.

But, despite all this, in the said judgment the court has observed that:

“The public information authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.”

Perhaps no one brought to the attention of their Lordships section 4(1) (d) of the RTI Act.

In so far as the court meant that a query for information, under the RTI Act, cannot require a reason or justification to be offered beyond what is on record, then it is correct. Of relevance here is a more recent (2011) Supreme Court order¹⁴⁹ that states:

“Under the RTI Act "information" is defined under section 2(f) which provides: "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, 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.

This definition shows that an applicant under section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed....”

However, the interpretation of the DoPT that this order means that no “why” questions can be asked, even if they are asking for reasons or justifications that are a part of official records, is clearly wrong. And if, in the judgment of the DoPT, the Bombay High Court at Goa’s cited order was subject to such an interpretation, then it should have immediately sought its overturn by an appeal to the appropriate court, rather than to proliferate this wrong interpretation (or mistaken order) to all and sundry.

¹⁴⁹ Civil appeal no. 7571 OF 2011 [Arising out of SLP (C) No.2040/2011] Khanapuram Gandaiah vs. Administrative Officer; K.G. Balakrishnan, CJI, and Dr. B.S. Chauhan, J.; 04.01.2010; AIR 2010 SC 615.

11. INTERNATIONAL EXPERIENCES AND LESSONS

- *The Australian transparency law evolved in the context of administrative law and public sector reform, spearheaded by lawyers, and as such is considered to be very complex and legalistic.*
- *The Canadian law emerged more as a governance reform than as a human rights law and, consequently, has broadly framed exceptions and gives much discretion on refusal of information to the executive.*
- *The Mexican law, like the Indian law, emerged out of a people's movement, initiated by the Oaxaca Group. This group also lobbied for the law and worked with the executive to get it passed in 2002.*
- *In Mexico, the human rights movements also gave support as they wanted access to information about past state-sponsored crimes. Though later, in 2007, access to information was recognised as a human right in the constitution, this has not permeated to the state laws, resulting in a lot of dissymmetry between and across states and the national level.*
- *The South African transparency law was an outcome of the anti-apartheid campaign which had as core values: openness, transparency and freedom of information. Civil society organisations under the rubric of the Open Democracy Campaign Group played a critical role in ensuring that the constitutional right of access to information was given effect through enabling legislation.*
- *In Bangladesh there are two views. One that the RTI law was the result of civil society movements. Another view is that it came about because of international pressure and pressure from donor agencies, supported by the elite. It is argued that though the law is progressive, it has not taken root because there was lack of grassroots involvement in its evolution.*
- *Though Nepal included right to information as a fundamental right in its constitution in 1990, it was only much later that they could get a facilitating law. The law came about mainly as a result of pressure from the media and therefore, even now, it is more thought of as a law for journalists rather than a law for the common person.*
- *A significant function of the Australian Information Commission is to oversee the information publication scheme for agencies, which stipulates that an agency must publish a range of information including the information about what the agency does and the way it does it.*
- *The Canadian Commissioner has the power to take cases to court if the government refuses to respect her recommendations (i.e. the burden does not depend on the requester to do this), and this happens in about half of the cases where her recommendations are refused. There are delays in the appeal system for there are no time limits set.*
- *The orders of the UK Information Commissioner are generally complied with and are in any case legally binding. In case of any dispute, the Commission can issue enforcement notices and certify to the Courts that there has been a failure to comply with decisions. Enforcement notices attract the same penalty as contempt of court.*
- *In Mexico, there is no general transparency law that is enforceable throughout the country, as each state has its own law. Thus there is wide variation in the scope and accessibility of information available and there are 32 Commissions with varying levels of performance.*
- *The decisions of the Mexican federal commission are not enforceable and what it does is to send reminders to the government agencies for implementation of its decisions. In many cases the requester of information gets wrong or incomplete answers after the review. There*

are no time limits for the Commission to respond to an appeal but it is estimated that they take almost 60 days to dispose an appeal.

- *The South African law appears to be a weak one. There is no specific implementation machinery provided and thus there is no Information Commissioner. All appeals lie with the courts. Courts are beyond the access of a majority of citizens, who do not have the required resources needed.*
- *In Bangladesh, two out of three Commissioners are traditionally former bureaucrats not known for their commitment to transparency. Most of the staff of the Commission is on deputation from the government and therefore reticent about taking positions against their government colleagues. This perhaps explains why there is hardly any application of the penalty clause against them.*
- *In Nepal, the decisions of the Commission are generally complied with even though there is a high frequency of appeals to the Court against its decisions.*

11.1 Introduction

An important objective of this chapter was to place the Indian RTI regime, or at least some aspects of it, in an international perspective, and to see if there were any lessons to be learnt from the experiences of other countries. Two aspects of the regime were identified as being the priorities for study. One, the factors behind the evolution of the transparency laws in these countries, and the impact they had on the nature of the law and on its implementation. This was thought to be important because many countries are even now going through the process of formulating their laws and establishing their RTI regimes. In South Asia there is Pakistan, Bhutan, Afghanistan, Sri Lanka, and the Maldives which are at various stages of establishing transparency regimes in their countries. Even Nepal and Bangladesh are relatively new comers, both their laws coming to effect in 2009, as is India, passing the national Act in 2005. Therefore, all of us would benefit from a better understanding of what happened in other countries.

The second priority issue was identified as the setting up, composition, and functioning of information commissions or other appellate bodies and systems. Though the laws of many of the countries were different from those of India, and so were their governance processes and their challenges and opportunities, the one critical institution that had a universal character was the information commission in each of the countries, many of which were modelled after each other.

11.2 Methodology

Essentially we created a set of questions that were relevant for our enquiry, and these were loaded on to an online platform¹⁵⁰ (see Box 11.1). We then identified seven countries, some English speaking and others not primarily English speaking, but developing countries, which had some similarities with India. The English speaking countries which all had information commissions were UK, Australia, and Canada. The developing countries chosen from outside the region, which had robust RTI regimes that had been around for longer than the Indian regime, were South Africa and Mexico. And the two countries from the region which had functioning transparency laws and information commissions were Nepal and Bangladesh. Subsequently, we got a respondent, through the UNDP, who was from France and gave us information about France and the transparency regime there, which has also been included.

¹⁵⁰ Survey Monkey

Three sets of people were identified who were invited to respond online to the questions. First, there were former and serving information commissioners, academics, and transparency activists from some of the sample countries who were members of the Transparency Advisory Group (TAG)¹⁵¹. Second, some of the well-known transparency activists other than those who were members of TAG were also invited. Finally, UNDP India, who were supporting the study, also contacted their offices in the sample countries and asked for inputs from their concerned professional staff. A list of those who finally responded is at annexure 9.

In addition, various websites were searched for information regarding the evolution and functioning of transparency regimes in various countries. A select list of the sites visited is given in annexure 10.

Box 11.1
TEXT OF THE QUESTIONNAIRE

Name:
E-mail id:
Country:
Institutional Affiliation (if any):

- Q 1. In your opinion what were the forces or coalition of forces (political class, bureaucracy, NGOs/civil society organizations etc.) that drove the passage of the transparency Act in your country?
- Q 2. Do you think the way the transparency regime emerged in your country has influenced the provisions of the Act and its effectiveness? Please elaborate.
- Q 3. If you were given the task of rewriting the Act, would you like to make changes in the present one? If yes, what specific new procedures or structural changes would you introduce?
- Q 4. Is the appellate system effective in your country? Please elaborate.
- Q 5. Do you have an Information Commission in your country? (If no, please skip to question number 12).
- Q 6. Is the Information Commission adequately empowered to ensure that information is provided and there is compliance of its orders? If you are of the opinion that the Information Commission is not effective, why do you think so?
- Q 7. Do appropriate and independent people get selected as Commissioners in the Information Commission in your country? If yes, what is the process of selection? If not, what is the lacunae which prevents the selection of appropriate and independent people as Information Commissioners?
- Q 8. What methods, if any, has the Commission adopted to ensure that there is no backlog of appeals/complaints?
- Q 9. Are orders/directions of the Commission complied with? If yes, what is the mechanism adopted by the Commission to ensure compliance and monitor implementation of its directions?
- Q 10. In your opinion, have the information commissioners generally been pro-transparency? Are Commissioners meticulous in following provisions of the law in their orders/directions?
- Q 11. Do appeals against the decisions of the Commission lie with the courts of law? Are the Commission's orders/directions often challenged in courts and overturned?
- Q 12. Have any of the stakeholders (people's groups and NGOs, government, media, appellate bodies,) used any innovative methods to resolve problems related to transparency regime to increase its effectiveness? Please elaborate.
- Q 13. Do you think people are sufficiently aware of the transparency law? If yes, why do you think so? If not, is there any deliberate effort being made to raise this awareness especially among those who are poor and the deprived?
- Q 14. Do you think government in your country has become more open after the passage of the RTI Act? Do you think it provides more information on its own without demand being made?

¹⁵¹ <http://transparencyadvisorygroup.org/>

11.3 Findings

11.3.1 Evolution of RTI regimes

In order to understand the processes by which the RTI regimes came into being in some of the other countries and the influence such a process had on the nature of the law and on its implementation, as a part of this assessment we contacted experts in various countries¹⁵² and requested them to fill in an online questionnaire describing:

- What were the forces or coalition of forces (political class, bureaucracy, NGOs/civil society organizations etc.) that drove the passage of the transparency Act in your country?
- Do you think the way the transparency regime emerged in your country has influenced the provisions of the Act and its effectiveness? Please elaborate.

Answers received for various countries are summarised below¹⁵³ and help put the Indian experience in a global context. However, it must be remembered that what follows usually captures one version of the narrative describing the evolution of the RTI regime in each of the countries. As we have seen in India, there could be other versions different or even contradictory to the dominant narrative, and we need to be at least aware of this possibility.

Australia

In Australia, ideas about freedom of information emerged in the context of administrative law and public sector reform. Leading figures within government and from the law fraternity played a key role, joined by a coalition of trade unions and civil society activists. Because of its administrative law heritage lawyers from the start have had a prominent role in the administration of FOI. Federally and in the states the attorney general's department has usually had policy responsibility. In many government agencies, a law branch or section has had responsibility for the management of the FOI function. According to a respondent, this has made the Act intensely legalistic. He further adds that the law has been described by the Law Council of Australia as turgid and difficult even for lawyers to come to grips with. The first test of an access to information law should be accessibility.

Canada

The adoption of the Act (in 1982) was the result of decades of discussion and attempts, going back to 1960s, when a private member's bill seeking to recognize the public's right to access government records was introduced in Parliament. This bill never went beyond its first reading. However, it kick-started debates on the issue that ultimately led to the adoption of the Access to Information Act almost two decades later. The Act was adopted the same year as Canada's Charter of Rights and Freedoms. At the time, the Act was considered to be at the forefront internationally. For example, the Act covered records containing national security (which could be protected pursuant to a discretionary exemption for national security information).

The Canadian Act was also influenced by bureaucratic considerations.¹⁵⁴ A respondent ¹⁵⁵ feels that the Act came in as governance reform, rather than as a human rights reform (albeit no one saw this as a human right back then). There was a sense that it was perfectly legitimate for government to

¹⁵² List at annexure 9

¹⁵³ The summary and analysis of the responses was done by Professor Kuldeep Mathur

¹⁵⁴ Vincent Gogolek

¹⁵⁵ Respondent Toby Mendel

decide on issues like the exceptions and also procedures. While the procedures were intended to be reasonable from the point of view of requesters, they also left a lot of discretion to officials, consistent with the idea that this was a governance and not a human rights issue. The same with exceptions. There were broadly worded exceptions, especially for internal government documents and cabinet documents. The feeling was that government could give or not give these documents depending on whether this would advance the (governance-related) purposes of the act, rather than seeing this as a human rights issue, with corresponding objective tests for exceptions.

United Kingdom

In the UK the primary driving force was the environmental organization Friends of the Earth which, in 1984, founded the Campaign for Freedom of Information (CFOI). Support also came from the National Union of Journalists and newspapers like the Guardian. Politically, the Liberal Democrats have most consistently promoted freedom of information. In the 1990's the European Directive on Access to Environmental Information gave rights to environmental information but without effective enforcement. It was not until after the installation, in 1997, of a Labour Government that a statutory right was taken through Parliament in 2000.

As a respondent¹⁵⁶ points out, the legislation in the UK draws upon the statutory framework of other Commonwealth countries such as New Zealand, and Queensland in Australia. The UK FoI Bill was strongly influenced by the CFOI but was weakened in Parliament. By contrast the Scottish FoI law drew heavily upon the UK bill but was strengthened as it passed through Parliament. It is seen as stronger and more effective than the UK law (for instance, the timescales in the Scottish law for compliance with requests, and internal review are not capable of extension; the decisions of the Scottish Information Commissioner can only be appealed to the Supreme Court of Scotland on a point of law).

France

France traces the lineage of its freedom of information laws to Article 14 of the 1789 Declaration of the Rights of Man, which called for information about the budget to be made freely available.¹⁵⁷ It enacted Law on Access to Administrative Documents in 1978. This law provided for a right to access by all persons to administrative documents held by public bodies. Our respondent¹⁵⁸ points out that the law codified administrative procedures for providing information to the public and focused on administrative bodies, rather than executive, legislative, or judicial bodies. Therefore it was rather driven by the bureaucracy. The law also provided mandatory exemptions from documents that would harm national interest. There are two other laws: 1978 Data Protection Act, and 1979 Law on Archives, that supplement the aims of the freedom of information Act.

Mexico

In 2001, a group of scholars, lawyers, reporters, editors and non-governmental organizations formed an alliance that came to be known as the "*Grupo Oaxaca*" or Oaxaca Group. The group's objective was to ensure that the new government would carry out its promise to promote new standards of transparency and openness. The group drafted its own freedom of information initiative and presented it before Congress on October 11, 2001. As the bill went through various stages of revision,

¹⁵⁶ Kevin Dunion Centre for Information, University of Dundee

¹⁵⁷ David Banisar 2004 Freedom of Information and Access to Government Record Laws Around the World, The Freedominfo.org Global Survey.

¹⁵⁸ Elodie Beth

the Oaxaca Group members lobbied for it, working with legislators and the executive branch to turn it into law. The group saw the bill through to its unanimous passage in Congress on April 30, 2002, and its signature into law two months later. Mexico's openness movement was also propelled by human rights activists clamouring for access to official government archives on past state-sponsored crimes.

Our respondent from Mexico¹⁵⁹ suggests that the RTI Federal Law was enforced in 2002 even when there wasn't a clear Constitutional provision. Then in 2007 there was a constitutional reform that recognized access to public information as a human right and defined the principles to guarantee it, but this last amendment was not fully instrumented in local laws. Therefore there were a lot of asymmetries between the different Mexican States (you could have more access to information in one region than another) plus there were some entities that were not bounded (unions, political parties, public funds, etc.) and the oversight bodies' resolutions could be appealable. The 2014 constitutional reforms tries to fight against these problems.

South Africa

The South African transparency legislation, the Promotion of Access to Information Act (PAIA), was passed following a combination of factors. Firstly it was given grounding through South Africa's political transition in the early 1990s following the adoption of the interim constitution of 1993, which in itself incorporated most of the African National Congress' own constitutional principles for a democratic South Africa. One of the principles that had been upheld by the ANC, as an anti-Apartheid liberation movement, was that of openness, transparency and freedom of information. However civil society organisations played a critical role in ensuring that the right of access to information, as enshrined in the constitution, was given effect through enabling legislation. Pro-democracy NGOs, human rights NGOs, religious formations and the labour movement, campaigning under the rubric of the Open Democracy Campaign Group, monitored and tracked the process of development of the legislation and were central to drafting some of the text of the legislation.

Bangladesh

A respondent from Bangladesh has pointed out that the passage of law was a response to the struggle of the civil society organizations demanding information as there was a rampant misuse¹⁶⁰ of power, lack of governance in the delivery of services, especially to the poor and powerless, and people were not getting information or having any mechanism to get it. Another respondent has elaborated on this broad perception by suggesting that there was a combination of pressure from some donor governments and international financial institutions. In 2008 an interim care-taker government existed in the country with no accountability to people. Civil society influence was combined with support from the elite class that led to the adoption of an RTI ordinance in 2008. When an elected government took over in 2009, with a popular mandate, it had little choice but to adopt the ordinance as one of the first legislations of the new parliament.¹⁶¹

Bangladesh law mentions that for the purposes of the Act among others, any private organization or institution run by government financing or with aid from the government funds will be included. In addition, any private organization or institution run by foreign aid or grant will also be included. Bangladesh is a recipient of very large international funding for its projects.

¹⁵⁹ Ana Christina Ruelas Serna

¹⁶⁰ Shaheen Anam

¹⁶¹ Shamsul Bari

Our respondent from Bangladesh finds that even though the RTI Act is progressive and of 'international standard', its effectiveness is diluted as there is still lack of understanding and appreciation of the provisions.¹⁶² Our other respondent argues that this has happened because of the context in which the Act was passed. It has had no grass-root backing and continues to be an endeavour from above.¹⁶³ An analysis of the categories of RTI applications included in the statistics of the Annual Reports, would show that most of such applications are of an ordinary nature which are made to government offices for various information unrelated to the objectives of RTI and could/would be made even if the Act had not existed. These include information relating to procedures for obtaining gun licenses, passports, train and boat timings, land registration, appearing in public service exams and the like. As such information is normally provided by the authorities without much hassle, they do not generate appeals.

Nepal

Nepal was among the first few countries of the world to include right to information as a Fundamental Right in the Constitution in, 1990. It appears that that this inclusion in the Constitution was an outcome of concern for freedom of expression articulated by the members of the constitution making body. Among journalists and media it was understood as a tool that could assist them in doing their job better. Initially, lawyers began to use this provision in litigation. It was later, in mid 1990s that journalists and media began to advocate enactment of right to information law. The Federation of Nepali Journalists remained one of the most vocal advocates for legislation until it was enacted in 2007.

11.3.2 Nature and functioning of information commissions

As described in chapter 1, as a part of this assessment we approached experts in various countries¹⁶⁴ to send us feedback on various aspects of the RTI regimes in their countries. A major effort was to see what sorts of appellate mechanisms exist in these countries and how they function. The inputs received from these experts are summarized below¹⁶⁵.

The country descriptions and assessments are clustered into three groups. The first cluster includes Australia, Canada, UK, and France – all so called “developed” countries. The second cluster comprises Mexico and South Africa, “developing” countries from regions other than S. Asia – both with longer experience with RTI than India. The third cluster comprise “developing” countries from the region with RTI laws that have been functional for a while – Bangladesh and Nepal. Bangladesh and Nepal are immediate neighbours of India and their Acts have been legislated after the Indian law was enacted in 2005. In both these countries, laws were enacted around the same time: Nepal in 2007, followed by the rules in 2009, and Bangladesh in 2009.

Information commissions in “developed countries”

Australia

Since the commencement of the Freedom of Information Act, 1982, in Australia, there have been a number of reports and reviews of the Act. Many have resulted in legislations and amendments. After the 2007 elections, reforms were undertaken and introduced through a package of three separate

¹⁶² Shaheen Anam

¹⁶³ Shamsul bari

¹⁶⁴ List in annexure 9

¹⁶⁵ The summary and analysis has been done by Professor Kuldeep Mathur

pieces of legislation in 2009 and 2010. The reforms emphasised increased access to government information and proactive disclosure of information by agencies through the new Information Publication Scheme. These changes represent the most substantial reforms to Australia's federal FOI scheme since its commencement in 1982. A significant legislation was the *Australian Information Commissioner Act 2010* (AIC Act). Previously, the disparate responsibilities of independent review of agency decisions, complaint investigation, publication of FOI guidelines etc. was either undertaken by the Minister responsible for the FOI Act or a range of agencies involved. For the first time the Act of 2010 has brought these functions together under one agency that of the Australian Information Commissioner.¹⁶⁶

Functions of the information commission

A significant feature of the Australian Act is that it establishes an information publication scheme for agencies. This scheme which has also been adopted by UK, stipulates that an agency must publish a range of information including the information about what the agency does and the way it does it, as well as information dealt with or used in its operation, some of which is called operational information. Further, the Act stipulates that an agency must in conjunction with the Information Commission review the operation of the scheme in the agency at least every five years. The Information Commission also issues guidelines for the preparation of the scheme and may assist the agency in preparation of information.

On receiving a request, the agency must inform the applicant of its receipt and within 30 days after the receipt the applicant should be notified of its decision. Extension of time can be decided upon in consultation with the applicant. This agreement must be notified to the Information Commission. If information is not given in time, it will be considered as refusal to give information by the agency.

An applicant can appeal to the Information Commissioner for review of the decision of the agency. A further appeal lies with Administrative Appeals Tribunal established in 1975 by a statute. The Federal Court is final court of appeal in matters of law. Information Commissioner could also make a reference to it for this purpose.

Status of the information commission

The Office of the Australian Information Commission (OAIC) is an independent statutory agency headed by the Australian Information Commissioner who is supported by two other statutory officers - the FOI Commissioner and Privacy Commissioner. More generally, the OAIC also has a role to provide advice to government, agencies and the general public about the operation of the FOI Act. The Information Commissioner is responsible for the information policy function. This requires the Information Commissioner to report to the Attorney-General on how public sector information is collected, used, disclosed, administered, stored and accessed.

Taken together, these functions cast the OAIC in the roles of regulator, decision maker, adviser, researcher and educator. They require the OAIC to provide guidance and assistance to government, the private sector and the community, while monitoring and regulating compliance with the privacy and information laws that the OAIC administers. The combination of the OAIC's three functions

¹⁶⁶ Review of the Australian Freedom of Information Act 1982 and Australian Information Commissioner Act 2010. This review was undertaken in 2013 as statutorily required in the respective Acts.

represents a new model for promoting open government and for resolving disagreements between the public and agencies.

Problems and issues

It appears that the Information Commission is facing major difficulties in performing its functions due to underfunding and excessive demands on its resources. The Federal Government announced in the 2014-15 Budget that the Office of Australian Information Commissioner would be abolished at the end of December. Legislation to effect the change is yet to be introduced. It will come under close scrutiny in the Senate where the government does not control the chamber.¹⁶⁷

Generally the decisions of the Information Commission have been complied with and there are very few appeals to the Courts. But our respondent feels that there is little interest in transparency at the top and the proposal or the abolition of the post may leave the FOI leaderless. The changes announced provide for the sharing of the functions of the Office of the Information Commissioner. The FOI Act will be administered jointly: by the Attorney-General's Department (advice, guidelines, annual reporting), the Administrative Appeals Tribunal (merits review) and the Commonwealth Ombudsman (complaints). The information policy advice function currently discharged by the OAIC will cease.

Canada

Process of appointment

In Canada, the Information Commissioner is appointed by the Governor-in-Council after extensive consultations with all political parties represented in the Parliament, and after approval of the appointment by resolution of the Senate and House of Commons. In order to determine qualified persons for the position, the requirement is published in the gazette and on the website. The first step in the process is for the Prime Minister to nominate his candidate. Following the announcement of the nominee, the Government tables the nomination in the House of Commons for referral to the appropriate Standing Committee of the House of Commons. As per the Standing Orders of the House of Commons, the designated committee has 30 sitting days in which to review and confirm its approval of the nominee. The committee's review will include an appearance by the appointee to discuss their qualifications for the position. At the conclusion of this appearance, the committee chair will ask the members whether they support the appointment.

After the meeting and following their decision to approve (or not), the committee will follow up with a report to the House confirming (or not) the appointment. The tabling of the report is then followed by a motion in the House of Commons formally approving the appointment.

Concurrently in the Senate, the process is the same except for the fact that rather than a specific committee. It is the Senate Committee of the Whole that meets with the Prime Minister's proposed nominee. At the conclusion of the appearance before the Senate Committee of the Whole, a Senator moves a motion for appointment. The appointment is then announced in the gazette.

Functions of the information commission

The Office of the Information Commissioner investigates complaints about federal institutions' handling of information access requests. The Information Commissioner has strong investigative powers to assist her in mediating between dissatisfied information applicants and government

¹⁶⁷ Respondent Peter Timmins

institutions. As an ombudsperson, the Commissioner may not order a complaint to be resolved in a particular way, though she may refer a case to the Federal Court for resolution. Whenever possible, the Commissioner relies on persuasion to solve disputes, asking for a Federal Court review only if an individual has been improperly denied access and a negotiated solution has proved impossible.

Two of our respondents think that the functioning of the Information Commissioner could be improved if powers for binding orders are also given to it. The organizations represented by them are proposing this reform.¹⁶⁸ However, our respondent from the Office of the Information Commissioner points out that the Commissioner is an ombudsperson. Therefore, she cannot order the government to release records but she makes recommendations. Nonetheless, annually, about 99% of all complaints are resolved at that level (the median time for resolving a complaint is 194 days – which includes a complete review of all records at issue).

Ordinarily, the agency needs to convey its decision within thirty days of the receipt of request. Any decision to extend the limit has to be conveyed to both the applicant and the Information Commission. The applicant has the right to complain to the Commission about the extension of time. The Information Commission sends its report to the agency for further action. In case the decision of the IC is not satisfactory the applicant can appeal to the Courts. It appears that there are no time limits in the appellate process and hence delays and backlogs are a frequent occurrence.

The Canadian law has not been reviewed for the last thirty years. The Commissioner is currently reviewing the Act. The improvements are being suggested to provide for stronger incentives to respond to requests in a timely manner, expanding the scope of information etc. Report is planned to be presented to Parliament by the end of September, 2014.

Status of the information commission

On the whole, there has been satisfaction with the nature of appointments made. In Canada, the Information Commissioner is an “agent of Parliament”. Agents of Parliament are independent statutory officers who report directly to Parliament rather than to government or an individual Minister. To maintain the independence of the Agent, the degree of influence exercised by the executive arm of government is minimal.¹⁶⁹

Generally, the appellate system has been effective. There is a two-tier complaints system in Canada, first to the Information Commissioner and second to the courts. The Commissioner enjoys independence and can recommend what information should be released. She also has the power to take cases to court if the government refuses to respect her recommendations (i.e. the burden does not depend on the requester to do this), and this happens in about half of the cases where her recommendations are refused. This is the reason why the Information Commission needs to have binding powers. There are delays in the appeal system for there are no time limits set.¹⁷⁰

Within three months of a financial year, the Information commissioner submits annual report of its activities to the Parliament. The commission has classified complaints into three categories viz. refusal complaints, cabinet confidence exclusion complaints and administrative complaints. What is significant is that in the course of the last three years - 2011 to 2014 - the number of complaints in all

¹⁶⁸ Toby Mendel Centre for Law and Democracy; Vincent Gogolek BC Freedom of Information and Privacy Association

¹⁶⁹ Josee Villeneuve

¹⁷⁰ Toby Mendel

categories has increased. The proportion of administrative complaints has increased by around 54% in the period.

United Kingdom

In the UK there was a Data Protection Act 1984 which created a post of Data Protection Registrar, which was renamed Data Protection Commissioner in 1998 and is now the Information Commissioner (IC) under the Freedom of Information Act of 2000. The mission of the office, as specified in the Act, is to 'uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.' The Data Protection Tribunal has also been renamed as the Information tribunal.

Process of appointment

The Information Commissioner in UK is appointed by the Prime Minister who in turn is advised by the Ministry of Justice. This is following a process of selection undertaken by the Ministry and validated by the Office of the Commissioner for Public Appointments after scrutiny. In Scotland, an open competition is conducted by the Scottish Parliament. An interview is conducted by a selection panel made up of Members of the Scottish Parliament, their strength on the panel being in proportion to their party's strength in Parliament (the panel is overseen by the Commissioner for Ethical Standards in Public Life in Scotland). The Parliament votes on whether to accept a candidate recommended by the interview panel. Technically Parliament nominates an individual to be appointed by the Queen.

Functions of the information commission

The IC performs two significant functions. One is to see that citizen's requests are complied with and the other is to see that public authorities maintain and adopt schemes to proactively publish information. The IC guides and promotes the proactive publication of information. The IC ensures that that publication schemes keep the public interest in mind, even though a public authority has the authority to design and implement its publication scheme in the manner it thinks fit. What is significant is that the IC may certify model publication schemes.

Further, the Information Commissioner is enjoined to submit an annual report to each House of Parliament on the exercise of her functions under this Act.

The orders of the Information Commissioner are generally complied with and are in any case legally binding. In case of any dispute, the Commission can issue enforcement notices and certify to the Courts that there has been a failure to comply with decisions. Enforcement notices attract the same penalty as contempt of court. Generally, the Commission has been pro-transparency and few of its decisions have been appealed to in Courts.

France

In France a Commission for Access to Administrative Documents (CADA) was envisaged. CADA is an independent administrative body chaired by an administrative judge from the Council of State. It has ten additional members representing different perspectives - a judge, a local elected official, a teacher, a member of the CNIL and 3 other qualified personalities. CADA is charged to oversee the implementation of the law and to review complaints. This Commission can mediate disputes and issue recommendations but its decisions are not binding. Our respondent suggests that in France the issue is not so much about the law but rather about its implementation. Public agencies are reluctant to release information and allow greater access to the citizens unless prompted by CADA.

Information commissions in “developing countries” outside South Asia

Mexico

Mexico has a Presidential system of government where the President is Head of state as well as Head of government. There is a multi-party federal system with a bicameral legislature. There is a Supreme Court at the federal level to judge laws of federal competency. One could say that it broadly follows the US system.

In Mexico, each of the public agencies is required to create Information Committees that are enjoined to coordinate and supervise the actions toward providing the information of each agency or entity, as envisioned in this Law. This Committee consists of a public servant designated by the head of the agency, the head of the liaison section and head of the internal oversight body of each agency. This Committee, apart from functions of internal coordination, also has the responsibility for helping people to frame requests and also train staff to respond to the requests for information.

Status, structure, and functions of the appellate bodies

Under the statute, there is a provision to set up The Federal Institute for Access to Public Information. This is a body that is independent in its operations, budget and decision-making. Its functions are to promote and publicize the right of access to information, ruling on the denial of requests for access to information and protecting personal information held by agencies and entities.

The Institute is made up of five commissioners, who are named by the Executive Branch and approved by the Senate. It has a right to reject the nominees of the executive. Apparently, the process of selection is being contested to make it more open and publicise the background of candidates. Effort is to institute public hearings in which NGOs are also involved. Our respondent has expressed some unhappiness with the kind of selections that have been made.

The Commissioners have also the responsibility of preparing guidelines in the way Information Committees need to function. In case of disputes, the decisions of the Commissioners are final and can be appealed in the Supreme Court. While there is no way to judge the success of demands made by the citizens, our respondent expresses the opinion that appeals are frequently made to the Courts and orders of the Information Commission are overturned. She further mentions that the Commissioners are usually not pro- transparency and are not meticulous in following the provisions of the law.

Problems and issues

Significantly, there is no general law that is enforceable throughout the country. Because of its federal nature, each state has its own laws and thus there is wide variation in the scope and accessibility of information available to the citizens. The result is that there are 32 Commissions with varying levels of performance. The decisions of the federal commission are not enforceable and what it does is to send reminders to the government agencies for implementation of its decisions. Our respondent¹⁷¹ further mentions that it is important to say that a great problem is that the majority of the Information Commissions do not have mechanisms to ensure the quality of the information is given after its order, so in many cases the requester of information gets wrong or incomplete answers after the review.

¹⁷¹ Anna Christina Ruelas Serna

Another thing is that administrative procedures against public servants do not mean that the requester receives the information asked for. It may be incomplete or irrelevant.

There are no time limits for the Commission to respond to an appeal but it is estimated that they take almost 60 days to dispose an appeal. There are some other local oversight bodies that do not have a legal time limit to dispose appeals, so the process could last 3 to 4 months (like a judicial process).

South Africa

The South African law appears to be a weak one. There is no specific implementation machinery provided and thus there is no Information Commissioner. The Human Rights Commission has been given added responsibility to frame guidelines for access to information. This Commission has been given the function of monitoring the Act and also recommend any improvements. It provides an annual report to the National Assembly on the progress in the implementation of the Act. Essentially, the Commission has been given the functions of dissemination of information about the Act and training etc. of the public officials responsible for its implementation.

Problems and issues

All appeals lie with Courts. Our respondent¹⁷² feels that this has made accessing information an expensive proposition for a common citizen. However the legislation is being amended through a different law, the Protection of Personal Privacy Act, which provides for establishment of an office of the Information Regulator that will handle disputes over both data protection and ATI issues.

Our respondent from South Africa suggests that the lack of an Information Commissioner and appeals lying with courts has made accessing information very difficult. This was a direct result of strong views by members of the judiciary that the judiciary is more than capable of handling disputes on access to information (ATI) and therefore there was no need for an intermediary dispute resolution mechanism. Reliance on the courts for dispute resolution on ATI, in a country with very deep socio-economic imbalances, means that the full extent of the exercise of the right to information is placed beyond access to the majority of citizens who do not have access to resources needed to bring the matters before courts. This is a conclusion of a parliamentary committee on review of state institutions supporting democracy.

Efforts are being made to strengthen the law. Our respondent mentions that the Justice Parliamentary committee has recently enacted a different legislation, the data protection law, to establish an enforcement mechanism on data protection, but the mechanism - the Information Regulator - will also have jurisdiction over access to information issues. In addition, the Open Democracy Advice Centre has partnered with the South African Human Rights Commission to convene an annual National Information Officers Forum (NOIF) and a Provincial Information Officers Forums (PIOFs), as platforms for co-learning and information sharing among officials tasked with the implementation of the law. These Forums serve as opportunities for benchmarking and highlighting best practice in implementation and compliance with the transparency law.

¹⁷² Mukelani Dimba

Information commissions in “developing countries” in South Asia

Bangladesh

Appointment of the Information Commission

As in other countries, the Bangladesh RTI law attempts to make the Information Commission independent and responsive to the demands of transparency. The Information Commission in Bangladesh has three members one of whom has to be a woman.

The Selection Committee consists of:

- i. A judge of the Appellate Division, nominated by the Chief Justice.
- ii. Cabinet Secretary to Government of Bangladesh.
- iii. One member of the ruling party.
- iv. One member of the opposition nominated by the Speaker.
- v. One representative nominated by Government from among the persons involved in the profession of journalism holding a post equivalent to editor.

The selection committee is enjoined to put two names against each vacancy and the government then appoints the member concerned.

A respondent from Bangladesh feels that the process of selection is not transparent and depends on the likes and preference of the head of government.¹⁷³

Problems and issues

The other respondent also echoes this view and says that the Information Commission is ineffective. The main reasons may be summarized as follows:

- a) Out of three Commissioners, two are traditionally former members of the bureaucracy not known for their commitment to public service or their particular expertise in the field. In the absence of a transparent and impartial selection procedure, the problem is likely to continue.
- b) Most of the staff of the Commission come to work for it on deputation from government services; they appear to feel reticent about taking positions against their government colleagues who are summoned to the Commission to explain non-fulfilment of their responsibilities under the law. This perhaps explains why there is hardly any application of the penalty clause against them.
- c) As the government hardly pronounces/demonstrates its own commitment to the success of the Act, the Commissioners appear to feel unsure about how far they should/could go to make it effective without encountering the wrath of the government.
- d) In the absence of previous experience, the commission appears to be more focused on the processes of the law than its substance.
- e) Too many hurdles have been created by the rules introduced by the Commission which have resulted in serious difficulties for people to make use of the law smoothly.
- f) There is clearly a lack of leadership on the part of the commission. As there is no other government agency entrusted with the responsibility to promote the law, there is scope for the Information

¹⁷³ Shaheen Anam

Commission to enter into collaborative arrangement with civil society organizations that are keen to help promote proper implementation of the law.

g) perhaps the most challenging problem is the mind-set of all concerned, including citizens, public officials, government generally and the Information Commission who perhaps find it difficult to believe that such a revolutionary law can indeed work in a country long used to official secrecy. There are signs, however, that changes are beginning to take place in this regard, albeit very slowly.¹⁷⁴

Nepal

Appointment of the information commission

The law in Nepal also attempts to create conditions for an independent Information Commission. The Information Commission consists of three members out of whom one has to be a woman. The Selection Committee will consist of Speaker as chairperson of the Committee, Minister of Information and Communication and President of Federation of Nepalese Journalists. The Government of Nepal appoints the Commission on the recommendation of this Committee. If there is a Commission for access of information, there is another committee for protection of information. The purpose of this Committee is to classify information at policy level and inform the Commission. This Committee is headed by the Chief Secretary and has Secretary of the relevant Ministry and an Expert of concerned subject nominated by the Chief Secretary. The appeal on the decision of this committee lies with the Information Commission whose decision can be appealed at the Appellate Court.

The rules framed under the law provide details of remuneration, perks and privileges including the quantity of petrol that can be used by commission members. An intriguing part of the perks provided is a Festival allowance which will be a month's salary per year. A member of the Commission can celebrate a religious festival according to her own culture and custom.

Problems and issues

Our respondent from Nepal¹⁷⁵ finds the Selection Committee working like any other political committee that is neither independent nor representative. The selection process is not transparent.

As far as the functioning of the commission goes, the response of our Nepali respondent are not very clear on this subject. He finds that the decisions of the Commission are generally complied with even though there is a high frequency of appeals to the Court against its decisions. Probably this might be happening due to the nature of demands. This needs to be investigated further.

Among public bodies defined, Nepal also includes in its definition a political party or organization registered under the law and also an NGO that works on the basis of money obtained directly or indirectly from the government. Both the countries have widened the definition possibly due to socio-political situation prevailing in each country.

11.4 Discussion

11.4.1 Evolution of RTI regimes

Significantly, the decisions of the Information Commissioners are generally complied with and there are very few appeals to Courts to redress grievances. All the three countries: Australia, Canada and

¹⁷⁴ Shamsul Bari

¹⁷⁵ Tara Nath Dahal

the UK, provide for submission of annual reports to the Parliament. This provision allows for public discussion of the way the Act is being implemented. Canada is also going through a process of reform of an Act that was passed around thirty years ago. Australia has already undertaken the exercise and so also UK, which has also consolidated its various laws. Citizen awareness is growing and public dissatisfaction is arising from exemptions to access of information. They are demanding that the government should open up more while expressing satisfaction with the way the Act is being implemented. As a respondent from Canada¹⁷⁶ asserts that there are huge secrecy provisions that affect the larger issue of transparency. He would like automatic release of data without charging any fees from citizens. Right to Information should be treated a constitutional right and provided free. France has a much longer history of the passage of the Act but there appears to be dissatisfaction with its implementation. The Commissioners here also do not appear to be pro-transparency. The bureaucrats resist giving information and mostly provide information only when CADA takes up a complaint.

The appointment process in Canada and Scotland is an elaborate one with open competition and the active involvement of the Parliament. The process possibly has strengthened the legitimacy of the office and hence acceptance of its decisions. In Canada, these decisions are not binding but generally acceptable. In UK, the Information Commissioner can issue enforcement notices which are legally binding.

General perceptions regarding the effectiveness of laws are not very favourable in South Africa and Mexico. There is a lot of concern for exemptions of agencies from the purview of the law and for privacy. While there is no Information Commissioner in South Africa, the role is fragmented in Mexico due to its federal structure. The Institute that is supposed to adjudicate does not have any binding powers and its decisions are frequently appealed to in courts and overturned. It appears that the civil society organizations are struggling against powerful forces and trying to find ways to make the government more responsive. A comment by our respondent sums it all up -The South African transparency law is recognised in breach than in effective compliance by the South African government.

What is significant, however, is that in both countries human rights organizations have played an important role in the passage of the law. In Mexico this could be because of the crimes committed by earlier regimes that were brushed under the carpet, and in South Africa there were crimes of an apartheid regime that had to be brought to justice.

This brief survey of experiences of some countries in implementing freedom of information presents some common and some distinct features of the laws. It highlights the fact that in all the countries the laws have been enacted in response to the demands being made by civil society organizations. They have not come about as part of the largesse of the government. Thus, the laws are a product of social political struggles and have taken time in gathering momentum and strength. These struggles have been spearheaded by different groups of civil society organizations. In Australia, the legal fraternity took the lead, in the UK the environment movement, while in South Africa and Mexico human rights organizations played a more prominent role. In Bangladesh and Nepal journalists and media joined this broad coalition.

¹⁷⁶ Ken Rubin

It is also interesting to note in passing, what the countries have laid down as objectives of the statutes. Among its objectives, the Australian Freedom of Information Act mentions that through the Act the Parliament intends to promote representative democracy and to increase recognition that information held by government is to be managed for public purposes and that information is a national resource. For Bangladesh, on the other hand, providing access to information leads to the hope that corruption will decrease and good governance will be established. Nepal also refers to the democratic system of government and seeks to make it responsible and accountable to its citizens. Mexico includes among the objectives of the law that it will contribute to the democratization of Mexican society and encourage accountability to its citizens. Other countries focus on giving information and the statutes providing a structure for implementing its provisions. The breadth or narrowness of the objectives of the transparency law could very well determine the sorts of expectations that the people have of the freedom of information laws and influence their perceptions of whether they are a success or a failure.

11.4.2 Nature and functioning of information commissions

All the countries are concerned with provision of an effective machinery to see that the law is implemented. In most countries under review an information commission or an equivalent body has been set up and given the task, with varying powers, of ensuring that the law is effectively implemented. South Africa is the exception where the courts have been given this responsibility. This has made access to information comparatively more difficult and expensive in South Africa and allowing Human Rights Commission to share some responsibility has been restrictive and not helped much. Australia is facing another kind of difficulty where the Information Commission is facing a resource crunch and may be dissolved in the next year's budget.

Where there are information commissions, the laws have provisions to see that information commissioners operate autonomously and fairly. The process of appointment is seen as a way of providing independence. In most cases, the selection process involves Parliament, members of the opposition and eminent citizens. But despite this, the general feeling is that the executive/Prime Minister plays a decisive role. In some countries, this has affected the legitimacy of the commissioner. In Canada and UK, however, individual appointees have commanded respect. There is agreement in all countries that an effective information commission and an impartial appointment process for the commissioners is essential for the proper implementation of transparency laws. Our respondents usually perceive an effective information commissioner as one whose decisions are binding. In some countries, particularly the developed ones, a tradition has evolved that the commissioner's decisions are accepted, even when they are not legally binding. Therefore, proportion of cases going to courts in these countries is much less.

In all the countries efforts to raise the awareness of citizens about their right to information continue to be made. In this effort, the civil society organizations are playing a major role.

Having said the above, there are certain practices that can be highlighted:

- There is an Information Publication Scheme provided for in the statute in Australia and later adopted by UK too. In this scheme the Information Commission asks each agency to publish information on its functioning on its own. The Commission guides the agency and approves the publication scheme.

- The Mexican law stipulates Information Committees in every agency to examine the requests received to allow for a collective decision rather than that of an individual bureaucrat.
- Nepal has included the functioning of a political party and any NGO with full /part government funding in the agencies whose information can accessed.
- Process of appointment of Information Commissioner is comparatively more participative and open in Canada and Scotland. Both countries go through a series of approvals in the Parliament of candidates who are competitively short-listed. The transparent process helps in legitimizing the position to much greater degree than appointments that are seen to come through deliberations of the Prime Minister or government.
- The orders of the Information Commission are binding on the agency in UK. If necessary, it can issue what are known as enforcement notices which are treated as contempt of court for punishment if not implemented.
- Laws in Canada and UK also place a time limit for the requests to be responded to by an agency. This time limit can be extended only with the concurrence of the Information Commission.
- Information Commissions in Canada and UK submit a detailed annual reports of their activities to the Parliament. This makes them accountable to the Parliament and also helps in making its activities transparent and available for public scrutiny.

It is interesting to assess which of these best practices have lessons for India. Though for the moment they have only been cryptically presented here, we have discussed some of them in greater detail in the section on key findings and recommendations, and have identified those which we think need to be investigated further so that their suitability for India could be assessed.

ANNEXURE

Annexure 1

To

Dr. Manmohan Singh

The Prime Minister of India, Prime Minister's Office, New Delhi

25th October 2009

Dear Dr. Manmohan Singh,

We are alarmed and distressed to learn from media reports that the Government of India proposes to introduce amendments to the RTI Act. This is despite categorical assurances by the Minister of State, DoPT that any amendments, if at all necessary, would only be decided upon after consultations with the public. We are further dismayed to read that far from strengthening the RTI Act, as stated by the Honourable President of India during her speech to the Parliament on 4th June 2009, the governments proposition would in fact emasculate the RTI Act. The proposed amendments include, introducing an exemption for so-called "vexatious and frivolous" applications, and by excluding from the purview of the RTI Act access to "file notings" and the decision making process, this time by excluding "discussion/consultations that take place before arriving at a decision".

Two current nation-wide studies, one done under the aegis of the Government of India and the other by people's organizations (RaaG and NCPRI), have both concluded, that the main constraints faced by the government in providing information is inadequate implementation, the lack of training of staff, and poor record management. They have also identified lack of awareness, along with harassment of the applicant, as two of the major constraints that prevent citizen from exercising their right to information. Neither of these studies, despite interviewing thousands of PIOs and officials, has concluded that the occurrence of frivolous or vexatious applications is frequent enough to pose either a threat to the government or to the RTI regime in general. Certainly no evidence has been forthcoming in either of these studies that access to "file notings" or other elements of the deliberative process, has posed a major problem for the nation. On the contrary, many of the officers interviewed have candidly stated that the opening up of the deliberative process has strengthened the hands of the honest and sincere official.

We strongly believe that it is impossible to come up with definitions of "vexatious" and "frivolous" that are not completely subjective and consequently prone to rampant misuse by officials. We also feel that it is a hollow promise to have legislation for ensuring "transparency" and encouraging "accountability" in governance which excludes the basis on which a decision is taken. Would it be fair to judge a decision (or the decision maker) without knowing why such a decision was taken, what facts and arguments were advanced in its favour, and what against? Can one hold a government (or an official) accountable, just on the basis of what they did (or did not do) without knowing the real reasons for their action or inaction? We, the people of India, already directly or indirectly know the decisions of the government, for we are the ones who bear the

consequences. What the RTI Act facilitated was a right to know why those decisions were taken, by whom, and based on what advice. This right is the bedrock of democracy and the right to information, and cannot be separated or extinguished without denying this fundamental right.

In any case, in case the government has credible evidence, that despite the findings of the earlier mentioned studies, and despite the safeguards inherent in the RTI Act, “vexatious and frivolous” applications, and access to the deliberative process, are posing a great danger to the Indian nation, these should be placed in the public domain. We are confident that the involvement of the people of India will result in evolving solutions that do not threaten to destroy the RTI Act itself. For a government that has been repeatedly been appreciated for bringing about this progressive legislation, such a move would strengthen the spirit of transparency and public consultation. Surely that is the least that can be expected of a government that propagates the spirit of transparency.

It is significant that even among the collective of Information Commissioners from across the country, whom the government recently “consulted”, the overwhelming view was against making any amendments to the RTI Act at this stage of its implementation. These Commissioners, all appointed by the government, have a bird’s eye view of the implementation of the RTI Act. They have the statutory responsibility to monitor the implementation of the Act, and the moral authority to speak in its defense. Since the government works with the democratic mandate of the people, the collective wisdom, of people across the board who use and implement the law with an ethical base cannot be put aside. In any case we feel the advice of the information Commissioners should be taken into account.

We urge the government to therefore, abandon this ill advised move to amend the RTI Act. Instead, we request it to initiate a public debate of the problems that it might be facing in the implementing of the RTI Act and take on board the findings of the two national studies that have recently been completed. It is only through such a public debate that a lasting and credible way can be found to strengthen the RTI regime.

This government gave its citizens the RTI Act, and there has been no crisis in government as a result of its enactment. In fact the Indian State has, as a result greatly benefited, and the RTI Act and its use by ordinary people is helping change its image to that of an open and receptive democracy. An amendment in the Act would be an obviously retrograde step, at a time when there is a popular consensus to strengthen it through rules and better implementation and not introduce any amendments. We strongly urge that an unequivocal decision be taken to not amend the RTI Act.

With regards,

Aruna Roy

Shekhar Singh

Nikhil Dey

And 216 others

Annexure 2

SONIA GANDHI

Chairperson
United Progressive Alliance (UPA)

10, Janpath
New Delhi - 110 011
Ph : 23012656, 23012686
Fax : 23018651

November 10, 2009

Dear Prime Minister,

The Right to Information Act is now four years old and has begun to make a significant impact on the relationship between the people and the government at all levels, from the local to the national. It is regarded as one of the most effective pieces of legislation, an instrument that has empowered people and made government more responsive.

Much has been achieved in these initial years and while there are still problems of proper implementation, RTI has begun to change the lives of our people and the ways of governance in our country. It will of course take time before the momentum generated by the Act makes for greater transparency and accountability in the structures of the government. But the process has begun and it must be strengthened.

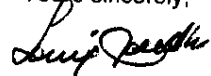
It is important, therefore, that we adhere strictly to its original aims and refrain from accepting or introducing changes in the legislation on the way it is implemented that would dilute its purpose.

In my opinion, there is no need for changes or amendments. The only exceptions permitted, such as national security, are already well taken care of in the legislation.

Two nation-wide studies, one by the government and one by NGOs, have indicated that the main constraints faced by the government are due to lack of training of government staff and inadequate record maintenance. There is also a problem with a public lack of awareness of the RTI and the harassment of applicants. It is these problems that need to be addressed.

With good wishes,

Yours sincerely,



Dr Manmohan Singh
Prime Minister of India
7, Race Course Road
New Delhi - 110 011

Attested

Mr
11/11/10

11/11/10
11/11/10
11/11/10
11/11/10
11/11/10

Annexure 3



प्रधान मंत्री
Prime Minister

New Delhi
24 December, 2009

Respected Sonia ji,

Please refer to your letter of 10 November, 2009 regarding the Right to Information Act.

I fully agree with you that the Act is one of the most effective pieces of legislation and is already changing the ways of governance in our country. However, as the implementation of the Act is still in its infancy, we are all learning as we go along. While we are taking steps to improve dissemination of information and training of personnel, there are some issues that cannot be dealt with, except by amending the Act. Just to cite a few, the Act does not provide for the constitution of Benches of the Central Information Commission though this is how the business of the Commission is being conducted. There is no provision about alternate arrangements in the event of a sudden vacancy in the office of the Chief Information Commissioner. The Chief Justice of India has pointed out that the independence of the higher judiciary needs to be safeguarded in the implementation of the Act. There are some issues relating to disclosure of Cabinet papers and internal discussions.

All these issues are being examined carefully in consultation with all the stakeholders. I would like to assure you that any amendments to the RTI Act would be considered only after completing such consultation and without diluting the spirit of the Act.

With warm regards,

Yours sincerely,

(Mamohan Singli)

Shrimati Sonia Gandhi
Chairperson
United Progressive Alliance
10, Janpath
New Delhi - 110011

Attested

Mr. Heli

सचिव, प्रधानमंत्री कार्यालय
नई दिल्ली

Annexure 4

Application 1

To,

Public Information Officer

Dear Madam/Sir,

I am sending this application under the RTI Act of 2005. I would be grateful if the listed information is provided to me at the earliest.

1. Please provide the following details about the RTI applications received by your Public Authority:

YEAR	RTI applications received	Not responded to	Fully rejected	Full information provided	Part information provided	Forwarded to another public authority
April 1, 2011- to March 31, 2012						
April 1, 2012- to March 31, 2013						

2. Please give the information asked for below regarding the time taken by the PIOs to dispose RTI applications:

YEAR	Part information provided for number of applications		Full information provided for number of applications	
	Within 30 days	After 30 days	Within 30 days	After 30 days
April 1, 2011- to March 31, 2012				
April 1, 2012- to March 31, 2013				

3. Please indicate in the table below the sections of the RTI act under which RTI applications were rejected:

Section applied	Total number of applications rejected in part or whole	
	April 1,2011- to March 31, 2012	April 1,2012- to March 31, 2013
2(f)		
2(h)		
2(j)		
3		
7(9)		
8(1) (a)		
8(1) (b)		
8(1) (c)		
8(1) (d)		
8(1) (e)		
8(1) (f)		
8(1) (g)		
8(1) (h)		
8(1) (i)		
8(1) (j)		
9		
11		
24		

4. Please provide the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, during 2011-12 and 2012-13, the nature of the appeals and the outcome of the appeals.
5. Please give the particulars of any disciplinary action taken against any officer in respect of the administration of this Act, during 2011-12 and 2012-13.

Please find attached an IPO No. **13F 883854**. Kindly credit the same in your appropriate head of account.

FROM
Amrita Johri

Signature
Address: B-76, Garage,
SFS Flats, Triveni Apartments,
Sheikh Sarai-I, New Delhi-110017

Contact no.: 011-41018185

Application 2

To,
The Public Information Officer

Dear Madam/Sir,

I am sending this application under the RTI Act of 2005. I would be grateful if the listed information is provided to me at the earliest.

1. Please provide a copy each of the latest fifty RTI applications received by your public authority for which information was provided or the request was rejected.
2. Please provide a copy each of the responses sent containing the information asked for or reasons for rejection, for the fifty RTI applications being asked for above.
3. Please also provide copies of the relevant pages of the application register, or any other record of the applications received, covering the last 100 applications received by your public authority, indicating their dates and the names and addresses of the applicants.

It might please be noted that the Department of Personnel and Training, Government of India, vide its memorandum No.1/6/2011-IR, dated 15th April 2013 has already directed that:

“1.4.1 All Public Authorities shall proactively disclose RTI applications and appeals received and their responses, on the websites maintained by Public Authorities with search facility based on key words.” (Copy of memorandum at http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/Suo_moto_disclosure-15042013.pdf)

Please find attached an IPO/DD No. . Kindly credit the same in your appropriate head of account.

Signature

Name: Amrita Johri

Address: B-76, Garage,
SFS Flats, Triveni Apartments,
Sheikh Sarai-I, New Delhi-110017

Contact no.: 011-41018185

Annexure 5

Application 1

To,

The Public Information Officer

State Information Commission

Subject: Application under section 6(1), Right to Information Act 2005

Please provide the following information:

INFORMATION REQUIRED	JANUARY-DECEMBER 2012	JANUARY-NOVEMBER 2013
⤴ Number of Appeals received by the Commission under Section 19(3), RTI Act		
⤴ Number of Appeals rejected on technical or other grounds without any orders being passed on the merits		
⤴ Number of Appeals disposed of by the Commission by passing orders on its merit		
⤴ Number of Appeals reverted back to first appellate authority or public authority for further action without passing orders on its merit		
⤴ Number of Complaints received by the Commission under Section 18(1), RTI Act		
⤴ Number of Complaints rejected on technical or other grounds without any orders being passed on the merits		
⤴ Number of Complaints reverted back to first appellate authority or public authority for further action without passing orders on its merit.		
⤴ Number of Complaints disposed of by the Commission on its merit		
⤴ Number of Orders/Decisions uploaded on the Commission's Website		

An application fee of Rs. 10 is enclosed in cash, IPO NO: 16F 17642

Name of Applicant: Anjali Bhardwaj

Address: B- 76, S.F.S. Flats (Triveni apartments), Sheikh Sarai Phase- 1, New Delhi-110017

Phone: 011-41018185

Application 2

To,

The Public Information Officer

State Information Commission of Andhra Pradesh

Subject: Application under Section 6(1), Right to Information Act 2005

Please provide the following information:

	ITEM OF INFORMATION REQUIRED	JANUARY-DECEMBER 2012	JANUARY-NOVEMBER 2013
1	Number of Appeals/ Complaints where penalty was imposed on the PIO under Section 20(1), RTI Act		
2	Total amount of penalty (in Rs.) that was imposed by the Commission under Section 20(1), RTI Act		
3	For cases decided in 2012 and 2013, the total amount of penalty (in Rs.) recovered.		
4	Number of Appeals/ Complaints where disciplinary action has been recommended against a PIO under Section 20(2), RTI Act		
5	Number of Orders/Decisions in which the Appellants/ Complainants were awarded compensation under Section 19 (8)(b), RTI Act		
6	Total amount of compensation (in Rs.) that was ordered to be paid by the Commission under Section 19(8)(b), RTI Act		
7	For cases decided in 2012 and 2013, the total amount of compensation (in Rs.) paid.		

Application fee: IPO No. 16F 17486

for Rs. 10/-

Name: Anjali Bhardwaj

Address: B- 76, S.F.S. Flats (Triveni apartments), Sheikh Sarai Phase- 1, New Delhi 110017, Phone: 41018185

Application 3

To

The Public Information Officer
State Information Commission of

Subject: Application under Section 6(1) of the Right to Information Act 2005

Name of Applicant	Anjali Bhardwaj
Address	Address: B- 76, S.F.S. Flats (Triveni apartments), Sheikh Sarai Phase- 1, New Delhi 110017
Phone/ Email	011-41018185
Information sought:	<p>A copy of all rules issued under Section 27(2)(e) of the RTI Act and all order/ circular/ memorandum/ instructions/ guidelines/ record issued by the Information Commission (pursuant to s. 15(4) of the RTI Act or otherwise), regarding:</p> <ol style="list-style-type: none">1. Functioning of the Information Commission.2. Filing, receipt, consideration and disposal of appeals and complaints filed before the Commission.3. Listing of appeals and complaints before the Commission.4. Grounds on which appeals/ complaints can be rejected/ returned/ disposed without the matter being considered on merit by the Commission.5. The system by which appeals and complaints are allocated to different Information Commissioners.
Application fee	IPO No. 16F 17642 for Rs. 10

Application 4

To

The Public Information Officer

State Information Commission

Subject: Application under Section 6(1) of the Right to Information Act 2005

✎ Please provide a copy of any rule/order/circular/office memorandum or any document or record relating to any system or procedure adopted by the Commission to ensure that-

- Orders of the Commission are implemented.
- Penalties imposed by the Commission under Section 20(1), RTI Act 2005 are recovered.
- Appropriate action was taken on the recommendation made by the Commission under Section 20(2), RTI Act 2005.

Application fee: IPO No.79G 89148 for Rs. 50/- is attached

(Signature)

Applicant

Name: Anjali Bhardwaj

Address: B- 76, S.F.S. Flats (Triveni apartments), Sheikh Sarai Phase- 1, New Delhi 110017

Phone: 011-41041818

Application 5

To
The Public Information Officer
State Information Commission

Subject: Application under Section 6(1) of the Right to Information Act 2005

Name of Applicant	Anjali Bhardwaj
Address	B- 76, S.F.S. Flats (Triveni apartments), Sheikh Sarai Phase- 1, New Delhi- 110017
Phone/ Email	011-41018185
Information sought:	<ol style="list-style-type: none">1. Please provide the number of complaints and appeals filed before the Commission stating that the information sought relates to the life or liberty of a person in –<ol style="list-style-type: none">2. January – December 20123. January – November 20134. Please provide a copy of any rule/ order/circular/ office memorandum/ document / record regarding the process followed by the Commission if a complaint or appeal states that the information sought relates to the life or liberty of a person.
Application fee	IPO No. for Rs. 10/-

(Signature)
Applicant

Application 6

To

The Public Information Officer

State Information Commission

Subject: Application under Section 6(1) of the Right to Information Act 2005

Please provide the following information:

1. List of all past and present Information Commissioners (including CICs) indicating for each:
 - a. Date of joining
 - b. Date of retirement/leaving office
 - c. Background before joining the Commission (IAS, IPS, etc.; other government services; journalist; doctor; lawyer; politician; teacher or academic; social worker or activist; others (please specify).
2. Number of Appeals pending before the Commission on –
 - a. 31 December 2012
 - b. 31 December 2013
3. Number of Complaints pending before the Commission on –
 - a. 31 December 2012
 - b. 31 December 2013

Application fee: IPO No.

for Rs. 10/- is attached

(Signature)

Applicant

Name of Applicant: Anjali Bhardwaj

Address: B- 76, S.F.S. Flats (Triveni apartments), Sheikh Sarai Phase- 1, New Delhi 110017

Phone: 011-41018185

Application 7

To,

The Public Information Officer

State Information Commission

Subject: Application under Section 6(1), Right to Information Act 2005

Please provide the following information:

INFORMATION REQUIRED	JANUARY-DECEMBER 2012	JANUARY-DECEMBER 2013
1. Number of Complaints where an inquiry was initiated by the Commission as per the powers vested in it under Section 18(2), RTI Act.		
2. Number of Complaints where the inquiry initiated by the Commission was completed.		

3. Please indicate whether the inquiry reports are uploaded on the website of the Commission for the said period.
4. Please provide copies of the inquiry reports on Complaints for the said period, where inquiry has been concluded.

An application fee of Rs. 10 is enclosed in cash, IPO NO: 21F 984979

Name: Anjali Bhardwaj

Address: B- 76, S.F.S. Flats (Triveni apartments), Sheikh Sarai Phase- 1, New Delhi-110017

Phone: 011-41018185

(Signature)

Applicant

Annexure 6

Application under RTI Act 2005

To

Please provide copies of the following documents regarding the RTI Act:

1. Rules (fee & cost, appeal and any other) and notification orders issued from 2005 to 31-12-2013.
2. Amendment to the rules (fee & cost, appeal and any other) and notification orders issued from 2005 to 31-12-2013.
3. Any other orders, circulars, notifications etc. regarding implementation of the provisions of the RTI Act issued from 2005 to 31-12-2013.
4. Circulars, orders, notifications etc. asking public authorities to comply with section 4 of the RTI Act issued from 2005 to 31-12-2013.
5. RTI guides for PIOs issued from 2005 to 31-12-2013.
6. Copies of all circulars and/or orders and/or notifications sent to all public authorities asking them to appoint public information officers (PIOs) and assistant public information officers (APIOs) issued from 2005 to 31-12-2013
7. Copies of any parliamentary and or legislative questions and other queries (like audit queries) regarding RTI from 2005 to 31-12-2013.
8. Copies of reports of meetings, workshops, seminars etc. organized to orient/brief or train officers on the RTI Act from 2005 to 31-12-2013.
9. Copies of all correspondence, proposals and other documents sent to other Ministries/Departments to get necessary resources (financial and/or human) to implement the RTI Act from 2005 to 31-12-2013.
10. Copy of appointment orders of the Chief Information Commissioners from 2005 to 31-12-2013.
11. Copy of appointment orders of other Information Commissioners from 2005 to 31-12-2013
12. Copies of reports of meetings, workshops, seminars etc. organized to orient/brief or train Information Commissioners on the provisions of the RTI Act from 2005 to 31-12-2013.

Thanking you

Amrita Johri

B76 SFS FLATS
Triveni Apartments
Sheikh Sarai phase 1
New Delhi- 110017

Annexure 7

	FRAMEWORK FOR ANALYSING RTI APPLICATIONS (Ref. Chapter 5)
General Information	1. Code (State/PA/Year/Compiler's initials/language/running number)
	2. Date of application
	3. Public Authority
	4. Gender (M=0; F=1)
	5. Single signatory (S), multiple signatories (M), Official Letterhead (L)
	6. Pin code
	7. Name of village/town/metro
	8. Length of application (in words)
	9. Length of annexures (pages)
	10. Summary of information being asked for (About whom/what geographical or administrative unit; type of information sought; form in which sought; any problem with the application)
	11. Remarks [identify and colour code human interest stories (green), with humour (purple), others that could be boxed or included in the narrative (blue). Also record any peculiarities or problems with the entry that were not captured in the earlier columns.]
Location	12. Is the applicant from a Village/Town/Metro (V,T,M)
Seeking information about	13. Applicant's own personal matters
	14. Applicant's own service matters
	15. Applicant's own family
	16. Someone other than the applicant/applicant's family
	17. A group/community
	18. Indeterminate/others (describe)
Seeking information relating to institutions/organisations/administrative or geographical entities	19. About one or more public authorities/ministries/departments
	20. About private bodies (Only those that are not public authorities, i.e, not substantially funded by public funds, and where information is being accessed under section 2(f) of the RTI Act).
	21. About specific locations/Projects
	22. About specific localities
	23. About a village/multiple villages/sub-district
	24. About one or more specific towns/metros
	25. About a district/multiple districts
	26. About a state
	27. About multiple states/region
	28. About the country as a whole
	29. Indeterminate/others (describe)
Type of information sought	30. Public information/Section 4 information(either by law/rule/practice/convention or as an obligation of the public authority or a non-RTI right of the public/obligation of the public authority under the RTI Act)
	31. Acknowledgement/response/information/status etc. that should have been communicated to an individual in any case (either by law/rule/practice/convention or as an obligation of the public authority or a non-RTI right of the individual)
	32. Information about norms (entitlements/processes/rules/time frames/policies/laws etc.)
	33. Information about delays (reasons for delay/ who is responsible/ when will it be done by, etc.)
	34. Information about decisions (details of decisions/ who makes the decisions/ when/ how/notifications etc.) 34.(a) Information about action taken/proposed to be taken; 34.(b) Information about dates of occurrences/happenings/ action/decision
	35. Information about the basis of a decision (what were the factors considered/ what material and data was considered/ who was involved, consulted, heard/what process was followed/ basis for plans and policies etc.)
	36. Information about lapses (what lapses occurred/ why/ who is responsible/ how and when will they be rectified/ penalties/ compensation/ facts and evidence, allegations) 36.(a) Information about discrepancies in records/documents

	37. Information about any schemes/ benefits/ privileges/ concessions/ exemptions/licenses/permissions given to anyone, including jobs/promotions, allocations, etc.
	38. Information about financial and economic matters and use of public resources/facilities (accounts, allocations, expenditure/entitlements/ salaries and remunerations/taxes/ materials/utilities/transport etc.) 38.(a) Information about compensation and rehabilitation 38.(b) Information about travel and cost/frequency/purpose/ details of travel 38.(c) Information about socio-economic status/ parameters/information
	39. Information about natural resources and occurrences (use/ destruction/pollution/ allocation/ conservation/ clearances etc.)
	40. Information about human resources (allocation of work/ human resources/ responsibilities/ staffing/vacancies/ performance/skills/training/ health/ qualifications/eligibility/ past record/ social identities etc.)
	41. Information about material/physical resources/objects/infrastructure (list, location, quality, use, distribution, rationale, maintenance, dimensions, status, disposal etc.) 41. (a) Land; 41. (b) Housing/Building; 41. (c) Moveable assets; 41.(d) Roads
	42. Information about own RTI application
	43. Information about RTI system
	44. Information about earlier (non RTI) communication (complaint/ query/ request/ application/ letter/ grievance/ etc.)
	45. Information about awareness/cognizance/recording of facts/events/perceptions
	46. Information about enquiries, investigations, assessments, etc. (about lapses/ complaints/ disasters/ events/ impacts/ follow up/ action taken/ relating to court/police cases etc.)
	47. Information about examinations (eligibility/ time, date and location/ method of evaluation/ mark sheets/ answer sheets/ reason for result/ etc.)
	48. Information about the existence/occurrence/location/status/contact details of an entity (physical or otherwise), facilities or opportunities (authority, committee, etc.)
	49. Indeterminate/others (describe)
Form in which information is sought	50. Response/reply
	51. Copy of documents
	52. Inspection of documents
	53. Inspection of sites/objects
	54. Samples
	55. File notings
	56. Electronic copy
	57. Filled in Proforma
	58. Statistics and data
	59. Indeterminate/others (describe)
Problematic RTI Applications	60. Vexatious
	61. Frivolous
	62. Not clear what is being asked
	63. Voluminous response required
	64. Infringement of Privacy
	65. Long time span (Over 10 years)
	66. Complaint – Not RTI
	67. Grievance – Not RTI
	68. Asking for Help – Not RTI
	69. Others
	70. Remarks
	71. Bits of information being asked for – how many questions?
	72. Number of topics or distinct topics – in terms of there being no connection between two or more subjects at the level at which the question is being asked.
	73. Keywords

Annexure 8

To,

Shri. Pranab Mukherjee
Hon'ble President of India

September 11, 2014

Subject: Appointment of Chief Information Commissioner in the Central Information Commission of India

Dear Rashtrapatiji,

It is a widely recognized fact that transparency and openness are key pre-requisites for good governance. The RTI legislation has been an entitlement which has kept the intent of a free and open system of governance afloat in our country. The multiple uses of the Act to improve government functioning are so huge that they defy enumeration. The implementation of the RTI law is seen as the one stated intent of the government to lay itself open to scrutiny, and therefore accountability.

The effective functioning of adjudicators under the RTI Act – the Information Commissions – is critical for the health of the transparency regime in the country. It is therefore a matter of grave concern that the post of the Chief Information Commissioner in the Central Information Commission of India has been lying vacant since August 22, 2014. It is for the first time since the constitution of the Central Information Commission in 2005, that the Commission is headless.

Section 12(4) of the RTI Act states-

“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.”

Clearly, the aforementioned section implies that the role of the Chief Information Commissioner is critical for the functioning of the Central Information Commission. The post of the Chief Information Commissioner being vacant, therefore, has the potential to adversely impact the effective functioning of the Commission.

Already there is a huge backlog in the Central Information Commission with close to 25,000 appeals and complaints pending in the Commission. Often people have to wait for more than a year for their appeals and complaints to be heard. The lack of a Chief Information Commissioner will cause the pendency in the Commission to further increase.

Section 12(3) and the accompanying 'Explanation' of the RTI Act state-

*“(3) The Chief Information Commissioner and 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 recognised 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*” (emphasis added).

We, as citizens of India, urge you to take immediate steps to appoint a Chief Information Commissioner in the Central Information Commission in a transparent manner.

The RTI Act has strengthened participatory democracy by enabling the citizens of India to monitor and access services throughout the country. We are confident that you will take necessary steps to urgently appoint the Chief Information Commissioner and strengthen the Right to Information law, which has been acknowledged in India and abroad, as an affirmation of the right of Indian citizens to participate in, and monitor, democratic governance.

Yours sincerely,

Signed/-

Anjali Bhardwaj, Aruna Roy, Deepak Sandhu, Maja Daruwala, Nikhil Dey, Shailesh Gandhi, Shekhar Singh, Venkatesh Nayak, Wajahat Habibullah

Annexure 9

International Respondents

(Responding to our survey described in Chapter 11)

Australia	Peter Timmins: affiliation not given
Canada	Vincent Gogolek, BC Freedom of Information and Privacy Association; Toby Mendel, Centre for Law and Democracy Canada; Josee Villeueve, Office of the Information Commission Canada.
UK	Kevin Dunion, Centre for Freedom of Information University of Dundee Ken Rubin, affiliation not given
France	Elodie Beth, UNDP France
Mexico	Anna Christina Ruelas Serna, Article 19 Mexico and Central America Office
South Africa	Mukelani Dimba, Open Democracy Advice Centre South Africa
Bangladesh	Shaheen Anam, Manusher Janno Foundation Shamsul Bari Chiarman Research Initiatives Bangladesh
Nepal	Tara Nath Dahal Freedom Forum Nepal and President Citizen Campaign for RTI
UNDP	Fransisco Chechi, Shaila Khan

Annexure 10

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- A number of surveys have been conducted relating to websites. In 2010 the survey about people's opinion was conducted.
- (a) <http://www.aip-bg.org/en/surveys/2013/200580/>
 - (b) http://www.aip-bg.org/pdf/ati_2010_all%20results_eng.pdf
 - (c) http://www.aip-bg.org/pdf/results06_07_08_09_10_ENG.pdf (Comparative results)
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