

Commonwealth Human Rights Initiative

Report of the Thematic Workshops

RTI IN INDIA-CONSTITUTIONAL AND LEGAL DEVELOPMENTS

and

RTI AND CIVIC ACTIVISM

Held at the

2nd National Convention on People's Right to Information

09/10/2004

Delhi University Arts Faculty

Resource persons:

- **Ms. Abha Joshi, Advocate, New Delhi**
- **Prakash Kardaley, Sr. Editor, Express Initiatives, Indian Express**
- **Ms. Shailaja Chandra, Chairperson, Public Grievances Commission, New Delhi**

Moderator: Venkatesh Nayak, CHRI

RTI in India - Legal and Constitutional Developments: Ms. Abha Joshi

Summary: Abha Joshi explained that most people are not even aware of the Constitution and our laws- that the Constitution lays down all the fundamental rights of citizens and the mechanisms for their promotion and protection. She said that the government is elected by the people's votes, and functions on public money in the interest of the public. Therefore, it is every citizen's right to demand that information recorded in the course of its functioning be made available to him or her.

The importance of information in a democracy is that it increases participation in governance, transparency and open government, and accountability of government to its citizens. And this very important right to information, which underpins all our other rights, flows from our right to equality before the law and lack of arbitrariness (Article 14), our freedom of speech and expression (Article 19 (1) (a)) and our right to life and liberty (Article 21).

Abha went on to explain **salient points** of the Freedom of Information Act 2002:

- **Information:** is defined as any material in any form relating to the administration, operations or decisions of a public authority.
- **Public Authorities:** are those authorities established by or under the Constitution or under any law made by the State Legislatures or Parliament, they also include all institutions that are substantially funded by the State or Central government or are controlled by the government.

- The legal mechanism in place to access information: There will be a Public Information Officer (PIO) for every public authority who can be approached with a written application for information. The PIO must assist in recording oral requests on paper if the applicant is unlettered. The Act lays down that a fee should be paid for every application, and information must be given as soon as possible, but not later than 30 days. Also, information relating to life and liberty is to be given within 48 hours.
- Exemptions: The government can deny giving information that would prejudicially affect the sovereignty and integrity of the nation. Also, cabinet papers and discussions, records of opinions and advice in the decision-making process, trade and commercial secrets protected by law, information related to Parliamentarians' privileges are exempt from the ambit of this law. There are also some institutions that are completely out of the reach of this law which are mentioned in the Schedule such as intelligence and security agencies.
- Information may also be denied when the request is of a general nature, which would demand too much of administrative time and resources is already published or is of a personal nature.
- The appeals process: Appeals can be made to an authority appointed by the government if an information request is refused. A second appeal can be made to the State or Central government (in Delhi, the Public Grievances Commission plays this role). However, the FOIA 2002 denies the right to approach any civil court for settling any disputed matter.
- suo moto disclosure: Government must give certain information suo moto, i.e., on its own. It must make public from time to time information about its powers, functions and way of working. Also, information about important decisions must be communicated to people, including development projects which would affect the public, and which must be communicated to those likely to be affected.

Abha Joshi explained that the legislative jurisdiction of the Central and State governments plays a very significant role especially once the Central Act becomes effective. Once the Central Act is enforced, it will have overriding effect on the State Acts where there are conflicting provisions. This is a cause for concern for civil society groups and other concerned people who would like to avoid a watered down Central Act at all costs.

RTI and Civic Activism: Prakash Kardaley

Summary: Prakash Kardaley began by saying that laws are made to regulate the actions of the common citizens but, with a good right to information law, common people can effectively monitor the functioning of the government. He explained that previously, even basic information about government functioning was denied to the people. Today, it can be demanded and accessed wherever one might be, thanks to RTI laws. He let participants know that out of all the information that is available with the government, there is but 1 or 2 per cent that cannot be accessed. The rest can and should be accessed by every citizen interested in securing transparency and accountability in government.

Salient points:

- The question of public interest: Government officials are appointed by a process, which is determined by rules laid down by representatives elected by people to look after public interest. Thus, the government official works on behalf of the public, and it flows from this point that the official is legally obliged to give the public information that they demand about the government's activities.

- Impact of citizen's activism:
- He gave the example of Arvind Kejriwal Of Parivartan in Delhi, who pursued food and civil supplies officers as well as fair price shop owners to expose their involvement in cheating BPL ration cardholders of their rightful entitlements.
- Today, NGO's like Parivartan assist people in enquiring about the status of their complaint against the non-performance or mal-performance of public service delivery mechanisms. Complainants can now demand to know what action has been taken against those officials against whom corruption complaints have been received by filing an RTI application with the concerned authority. The result of these tireless efforts by citizens will be greater transparency and accountability - the government will not be able to function in secrecy.
- In the beginning, in both Maharashtra and Delhi, where RTI awareness grew out of citizens' activism, officials denied information to the public. However, RTI laws provide for an appeals mechanism, which an aggrieved citizen can approach on being denied information or upon being misinformed. Some State laws also allow penalty to be imposed on erring officials.
- In Maharashtra, the Appellate Authority did not in the beginning impose penalties on erring officials. However, activists lobbied with the Chief Minister and the Chief Secretary to issue an order indicating that the Appellate Authority will be liable for departmental action if he/she does not punish officers who deny information to or who misinform the public. The outcome of this activism is that in a recent case of delaying information in Pune, the Municipal Commissioner of Sangli, acting in his capacity as Appellate Authority, imposed a penalty on his junior officers for delaying supply of information to the requestor.
- Activists feel that an independent Information Commissioner who will be the central authority to receive all RTI applications from citizens, secure the requested information or documents from the concerned departments and also have the power to punish erring officials would be a good move for a more efficient implementation of RTI law. The Information commissioner should be made an autonomous body in order to resist political pressure against revealing public information.

Meeting Citizens' Demand for Information- A Supply-side View: Ms. Shailaja Chandra

Summary: Shailaja Chandra said that in 2001 when the Delhi RTI Act was passed, it was hoped that the public's difficulty in gathering information would cease to exist. During that time, there was not yet a system in place to impose a financial penalty for misinforming or for denying information. However, the Delhi RTI law and related rules have now put in place a mechanism by which those officers who violate the RTI law would be penalized and have their salaries cut for unlawfully refusing information or deliberately providing misinformation.

Salient points:

Shailaja Chandra explained that the method by which the Public Grievances Commission (the AA under the Delhi RTI law) decides whether an official should be penalized is by quantifying the degree of harassment and the number of rules broken, on the basis of which the penalty order is issued and submitted to the Lieutenant Governor. The PGC was formed in 1997 to deal quickly with complaints about deficient public service delivery. Subsequently it was made the

Appellate Authority to deal with requestors' appeals. Once an RTI requisition is filed by a citizen, the PGC has the right to study the files relating to the information request, the process involved in refusal to give information and issue systemic orders based on it.

Ms. Chandra said that the most number of complaints have been received against the Food and Civil Supplies Department. To this end, she specifically mentioned the cooperation of NGOs in Delhi who have brought to her attention several cases. Now, with greater number of complaints and senior officers insisting on accountability, more information is forthcoming to the public.

Shailaja Chandra drew attention to certain factors that come in the way of effectively implementing the Delhi Right to Information Act-i.e, the major hurdles. These include the following:

- Officials are afraid that citizens may complain against them to the PGC.
- Government departments are understaffed. This results in complaints lagging behind and lack of timely action.
- Most officers have not read the law so their first response is to deny information when asked as they are trained in a culture of secrecy.
- It is difficult when the public asks for information that does not fall under the PGC Chair's control, such as departments and public bodies functioning in the capital but which are not controlled by the Delhi Government.
- There is a problem in penalizing a government official. The cadre authority rests with the Home Ministry who conducts the enquiry and no punishment may be imposed without their approval. This can take anywhere between 1 and 10 years.
- People insist that officers against whom corruption complaints have been received be punished. This is difficult because once the penalty order is issued and then not followed by the concerned department it can have a negative impact on the system in place to monitor corruption and enforce accountability.

Ms. Chandra concluded that as Chairperson of the Public Grievances Commission, she has seen a big difference in the last three years. Of late, orders relating to specific cases get dictated in the presence of the complainant. However, the public needs to understand that there are several complaints that come everyday, so action on their complaint should not be expected to be taken overnight.

She emphasized that the media can play a constructive role by providing good coverage of the positive role played by the PGC. Shailaja Chandra had also to say that the public can and should be more cooperative.

General Interventions:

- Venkatesh Nayak pointed out that the NCPRI submitted to the National Advisory Council a draft document suggesting amendments to the Central Freedom of Information Act (FOIA) in August this year. In the meantime, draft rules for the existing FOIA were put up on the Department of Personnel and Training website causing some confusion. It was not clear whether the Act in its current form would be enforced after all, overlooking the drafted amendments of the NAC. The PMO has assured civil society groups that the

drafted amendments, after consideration with the concerned departments, would be finalized and tabled in Parliament during the upcoming winter session. CHRI is in touch with other civil society groups updating them about the developments.

- A participant wanted to know whether the government should display the list of Competent Authorities. Shailaja Chandra said that the Delhi government website has already done that. However, the RTI Act obliges the government to provide details of the Act, along with the list of Competent Authorities by displaying them prominently outside the government office. A large part also rests with the Chief Minister whose initiative can bring about a people-friendly legislation. This needs to be properly implemented.
- Participants expressed concern that RTI laws normally do not include private bodies that perform public services such as mobile phone companies and private power distributing agencies. There was an urgent need to bring such bodies within the ambit of RTI laws to make their functioning more transparent.
- Participants from states like West Bengal, Orissa and Gujarat expressed concern that their states were unwilling to pass RTI laws of their own because the Central law would be soon be enforced. This hampered the citizen's demand for transparency. It was pointed out by the resource persons that existing Citizens' Charters issued by various departments and Panchayati Raj laws contained some information access provisions. An attempt can be made to secure information under these provisions.

The workshop ended with a vote of thanks to all resource persons and the participants.

More than 50 participants from Delhi, Gujarat, Rajasthan, Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa, West Bengal and Karnataka attended the 3 hour long workshop.

*Report compiled by Ms. Renu Vinod of CHRI.

