

**Report of**  
**The Meeting on Implementation of Right to Information Act 2005 by**  
**the Government of Meghalaya**  
**Shillong**  
**25<sup>th</sup> August 2005**

**Introduction**

In Meghalaya, the preparation for implementation of the Right to Information (RTI) legislation has begun sometime back. The Department for Information and Public Relations (IPR) has been chosen as the nodal agency for implementing this law throughout the State at all levels of Government. As the RTI Act has an in-built deadline of 120 days to complete preparations for its implementation, the State Government held a meeting of senior officers to discuss about the main provisions of this legislation as well as on issues of implementing the law.

The Government of Meghalaya invited Commonwealth Human Rights Initiative (CHRI), New Delhi to a half-day sensitization meeting on the RTI Act. Participants discuss

**Setting the Agenda – Address of the Chief Secretary**

Mr. Bazeley, IAS, Chief Secretary, Government of Meghalaya, welcomed the Honorable Chief Minister, Mr. D.D. Lapang, and the Additional Chief Secretary Mr. Tiwari, Mr. Venkatesh Nayak, Project Coordinator, CHRI and other senior colleagues and officers of the state government. He informed the gathering that the Cabinet has discussed the Right to Information law and they have directed that action have to be taken for proper implementation of the law. He said that the Act becomes effective in 120 days from 15<sup>th</sup> June.

He further informed the gathering that a State level Task Force on Implementation of RTI has been formed under the guidance of Mr. J.M. Mauskar, Principle Secretary, Government of Meghalaya. Some departments have notified Public Information Officers PIOs. He told the officers present that the rules for operationalising the Act are yet to be framed. With regard to rules he further said that rules would be first framed by the Central Government and then on that basis the state government can adopt the same. He said that some state RTI acts would be repealed. Mr. Bazeley then complemented CHRI for holding a consultation on effective implementation of RTI law, where other nations had been invited to share their experiences. He said that the Government of Meghalaya had greatly benefited from the Conference. He noted that RTI Act is a reality and has to be implemented on the right date. He also mentioned about the RTI clock, which has been put up by the RTI movement mait shaprang movement in Meghalaya. He said that the clock is ticking away and is a reminder that not many days are left for the enforcement of this law.

**Inaugural Address by the Chief Minister of Meghalaya**

Mr. D.D. Lapang, the Chief Minister of Meghalaya gave the inaugural address at the meeting. He said that transparency and accountability are essential for healthy democracy

and for meaningful and participatory governance. He further said that the Right to Information Act 2005 had received the assent of the President on 15<sup>th</sup> June. Certain provisions in the Act will come into immediate effect and others will come into force after 120 days from 15<sup>th</sup> June. He informed the gathering that the purpose of this meeting is to educate us about this Act and translate it into spirit. He pointed out that the state government is committed to the proper implementation of the Act and it can be considered as another facet of service to the people. He added that people are today more conscious of their democratic rights. He said that there are only 49 days left with the government for the preparatory phase before the Act comes into force. He cautioned that all officers should be adequately equipped with knowledge re RTI Act and must implement the Act with responsibility. He said that every officer should be very serious about its implementation otherwise it would reflect a bad image of the government. He cautioned that if any officer pleads ignorance re the provisions of this act, then that will not be excused. He added that whatever is permissible according to the law must be given to the citizens. He concluded his address by saying that the deadline for implementation must be honored and respected.

### **Explanation of the Right to Information Act 2005 by Mr. Venkatesh Nayak, Project Coordinator, CHRI, New Delhi**

Venkatesh Nayak congratulated the state government for the steps it has taken for democratizing this right. He said that any information, which cannot be denied to members of Parliament or State Legislative Assemblies, also couldn't be denied to the citizens of India. He also said that he was proud to be associated with this initiative in Meghalaya and he treats this meeting as a two-way learning experience.

He made a presentation on the salient features of the RTI Act. The highlights of the discussions, which followed the presentation, are given below:

**State Information Commission:** With regard to the State Information Commission, Venkatesh said that members of the Information Commission would be of the same rank as the State Chief Secretary. So far only two persons in a state had the power to ask for any government record and document. Now with the establishment of the State Information Commission, there will be a third agency which will have powers to ask for all government records from the various departments.

**Proactive Disclosure:** On this matter, Venkatesh felt that voluntarily disclosing information by the public authorities as given in s.4 of the Act is the best way to reduce the burden of replying to all the applications for information request. Information can be disseminated through manuals, websites, and newspapers or by making public announcements or by pasting on notice boards. A document containing all information, which must be disclosed proactively must be kept with every PIO, which then can be easily accessed by the citizens.

**Appointment of PIOs:** Mr. Nayak stressed the importance and significance of appointing PIOs in every public authority. He said that in case PIOs are not appointed,

the State Information Commission has been given the power to designate these officers as per s.19 of the RTI Act. However, the intelligence and security organizations established by the Central Government as given in Schedule 2 do not have to appoint PIOs.

**Fees:** Besides the fee structure as given in the Act, Mr. Nayak also emphasized the fact that there must be a procedure for refunding additional fees which are paid by citizens for accessing information from government.

**Appeals Process:** After presenting the main features of the appeals mechanism as given in the Act, Venkatesh said that the challenge in the appeals process is to find out whether the rejection is justified or not. In order to do this it is not necessary for the citizens to be present in the hearing before the appellate authority. He cited the example of Maharashtra, wherein, many people had appealed to the Lokayukta. In this process activists started accompanying the citizens to the Lokayukta. As a result, the PIOs also started taking government pleaders before the appellate authority. This was considered to be a bad practice. Moreover, according to Venkatesh Nayak, a citizen can bypass the departmental appellate authority and can approach the State Information Commission directly in case he or she has any complaints regarding getting information from the government.

**Penalty provision:** According to Venkatesh, no law can be enforced under the threat of penalty. So in order for the PIOs to carry out their duties and responsibilities in an effective and efficient manner it is necessary to train and guide them in the initial phase. In case a PIO does not carry out his duty with reasonable cause, he can be penalized if found guilty. In Maharashtra and Karnataka, which have state RTI laws, PIOs have been fined to the tune of Rs. 20,000 in some cases.

**Identification of public authorities:** Venkatesh gave the example of Uttaranchal in explaining the identification of public authorities at different levels. He said that public authorities would be identified at each level- Secretariat, district, sub-division, block and panchayat. Even the police station would be considered to be a public authority.

**Public awareness and training:** With regard to training of the PIOs, Venkatesh said that it is the responsibility of the public authorities to train their own public information officers and appellate authorities. He informed that the state government in Uttaranchal is putting together a practice manual for PIOs and citizens in one document. In this manner citizens will get to know the roles and duties of PIOs.

### **Steps to be taken by Government of Meghalaya**

Mr. Tiwari, the Additional Chief Secretary of Meghalaya informed everyone that PIOs would be appointed at different levels – state, sub-division, and district and sub-district level. Each department will have to identify Public Authorities and communicate this to the Department of Information and Public Relations (IPR). These public authorities will then have to duly designate PIOs and APIOs. The IPR will notify this in the official gazette after getting the Minister's approval. Mr. Tiwari also referred to the detailed letter by the Chief Secretary Shri. P.J. Bazeley, IAS to the Additional Chief Secretary and all

Principal Secretaries, Commissioners and Secretaries of all Administrative Departments, Commissioners, Heads of Departments and Deputy Commissioners. This letter details out the implementation process of the RTI Act. It details out the various tasks that need to be carried out by the government and also includes an implementation schedule for major activities which need to be completed before the deadline of 120 days as given in the Act.

In order to bring NGOs which are being substantially financed by the government within the purview of this Act, each government department which is funding NGO projects will write to those NGOs telling them that since they are being funded by the government they might be covered by this Act and hence should adequately prepare themselves to provide information if requested by the citizens.

During the course of the discussion a number of questions was asked by the participants re implementation of the Act. These questions followed by the responses have been given below:

### **Questions and Responses**

**Q. Since the Official Secrets Act, 1923 has not been repealed, what happens to the oath of secrecy that government officials take on appointment?**

**Response:** With the enactment of the RTI Act, this situation might have to be revisited to make the necessary changes. The Official Secrets Act will have to be reconsidered. However, certain government procedures will have to be done in secrecy. This includes, for example, the budget making exercise. Moreover, there is a need to see how the different departments classify documents and records in order to identify those, which are considered to be confidential. For example, the manual for police in Gujarat and Maharashtra is stamped confidential. With the enforcement of the RTI Act, there might need to be changes in the classification and categorization of government records, files, documents etc.

**Q. What is the role of Assistant Public Information Officer (APIO)?**

**Response:** APIO is like a one-way post office. The main responsibility is to receive applications for information and for appeal and forward the same to the concerned PIO or appellate authority. The appointment of the APIO should be made at the sub-divisional level. There can be one APIO who may belong to one department and serve all departments. For example, a request for information regarding tube wells sunk in a particular region may be asked. Several departments can sink tube wells in an area. The person requesting the information can write the application and send it to the APIO who can then forward it to the concerned department dealing with tube wells.

Moreover, in order to make it easier for people to access information from the PIOs a Directory containing the names and contact details of PIOs and APIOs should be prepared and then be made available to all. This provision is there in s.26 of the Act which mentions that the appropriate government shall, if necessary update and publish

the guidelines, including postal address, phone and fax number and electronic mail address (if available) of the PIO of every public authority. This directory can be placed in the district libraries or with the information commissioners for people to have access to them.

Mr. Marwein, Commissioner and Secretary, Government of Meghalaya, informed the officials present that in Meghalaya, APIOs would be appointed at each sub-division for each office.

**Q. Will the state government draft rules for this law?**

**Response:** Unfortunately the central government rules, which have not been finalized as yet, are not exhaustive. Some state governments have taken up the initiative of drafting their own rules. Besides rules, there is also a need to have detailed guidance notes explaining the Act in simple terms especially terms such as public interest, action taken in good faith, the various exemptions etc.

**Q. Why is it that only public servants are answerable for not complying with this law? As Public Information Officers (PIOs) there might be some problems and hurdles in getting information, which is held by other officials, since not all information will be available with them. In fact some information might be with a senior government official.**

**Response:** In response to this question it was mentioned that according to the RTI law there is protection for any action taken in good faith. Under s. 21 of the Act, it has been mentioned that “no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.” Moreover s. 20 specifies that the PIOs “shall be given a reasonable opportunity of being heard before any penalty is imposed on him”. However the burden of proof that he acted reasonably and diligently shall be on the PIO. Therefore, in the case if the PIO is facing difficulties in not being able to get the information requested from his seniors, then he can give the reason that he did try his best to get the information from his senior who refused to part with it.

Moreover, S.5(3) of the Act provides that in order for a PIO to properly discharge his or her duties, they may seek the assistance of any other officer, who shall render all assistance to the PIO.

**Q. S.20(2) of the RTI act mentions that disciplinary action will be taken against a PIO if the Central or State Information Commission feels that the PIO has been persistently not receiving applications or not giving out information or knowingly giving wrong information? How do you define the word “persistently” in this case?**

**Response:** This word was put in because past experiences show that PIOs would refuse to accept applications for information in certain states, which have RTI laws. Moreover, the applicants would have no proof regarding the rejection of application. As a result of

this people started sending applications by registered post. In this case too, the applicants would often be told that the envelope was found to be empty. However, with the RTI Act, the citizens can appeal against any decision of the PIO including for not receiving the applications. The State Information Commission will have to treat each case as it comes and can then come up with its own criteria for defining certain terms in the Act. The Commission can seek reports from every public authority and can identify the departments, which are continuously, and persistently violating the Act.

**Q. What will happen if a Public Information Officer is wrongly punished?**

**Response:** The RTI law does not say that a PIO who feels that he or she has been wrongly punished can appeal against the decision of the State Information Commission. However, he can appeal before the High Court or Supreme Court.

**Q. What happens if a requestor asks for information at the district level, which is available at the Secretariat level?**

**Response:** In this case the PIO at the district level who receives the application for information and does not hold the information asked for shall transfer the application to the concerned public authority at the state level and inform the applicant immediately about such transfer. This is as per s.6(3) of the RTI Act.

**Q. The Act provides that where the information sought for concerns the life and liberty of a person, then it has to be provided within 48 hours of the receipt of the request. Can this be explained further?**

**Response:** In order to explain this clause an example highlighting citizens rights vis-à-vis law enforcement authority was given. A few months back Manorama Devi was arrested by the law enforcement agency in Manipur. However, at that time, under the Armed Forces Special Powers Act, no information could be given to the relatives of the arrested person. However, now under the RTI Act such information concerning the life and liberty of a person has to be given within 48 hours of the receipt of the request. However, in order to implement this clause specific guidelines will have to be prepared.

**Q. Materials and information given out to citizens can be misused. What needs to be done to avoid this?**

**Response:** The Act does not provide for knowing or verifying the intention for which the citizens seek information. Nevertheless, the RTI Act must be used responsibly by the citizens as well as by the government machinery. Misuse of the law will create obstacles in its implementation.

**Q. With the enactment of the RTI law, there can be a clash with other existing laws, which require confidentiality of categories of papers. In this situation the existing laws need to be amended. For example the VAT law does not allow information to be given out and nor does it provide the mandate for a public authority to go to the**

**third party, which is there in the RTI Act. How will the Official Secrets Act, 1923 and the VAT law be reconciled with RTI?**

**Response:** Steps are being taken to get all laws in congruence with RTI law, as there is a need to harmonize all laws. In case if there is a request for personal information with regard to taxes etc. and if there is a public interest in asking for it, then it must be given.

**Q. As per law case diaries of trials and investigations cannot be provided. However, in the current situation can these case diaries be given to citizens as they might have doubts re the investigation proceedings since there have been instances of people asking for case diaries, station diaries etc.**

**Response:** Instances of providing information re case diaries can be given provided it is shown that the action was done in good faith.

**Q. If people living below the poverty line (BPL) do not have identity cards, then how are they to be identified and verified when they ask for information under the Right to Information law?**

**Response:** There is a need to find a way of identifying BPL families in the state of Meghalaya, especially for enjoying the benefits of state government sponsored schemes. The inventory of BPL families who enjoy the benefits of central government schemes already exists with local authorities. When requesting for information a person belonging to the BPL category needs to give a photocopy of his identity proof.

**Q. Will co-operative societies or self-help groups (SHGs) be considered as public authorities?**

**Response:** S.2(h) of the RTI Act defines “public authority” as that which has been established or constituted by the Constitution, by a law made by the Parliament, State Legislature, or by a notification issued by the appropriate Government which includes any body owned, controlled or substantially finance by the appropriate Government. If co-operative societies or SHGs fall within this definition then the RTI Act will cover them.

**Q. The Khasi hills have their own traditional institutions of self-governance where there are village headmen known as “gaon bura” who are appointed by local chiefs. Does the RTI law cover these institutions?**

**Response:** In other states there are elected Panchayati Raj Institutions (PRIs), which function as institutions of local-self governance. Since these are constituted by the Constitution, they fall within the definition of “public authority” as defined in the Act and therefore are covered by the RTI Act.

In Meghalaya, if the government funds the traditional institutions then the RTI Act will cover them. There is a need to have a dialogue with these traditional institutions before deciding on their being covered by the RTI Act.

**Q. With the enactment of the RTI Act, structural details re construction works will have to be given out to the citizens. Is the RTI Act applicable to only Indian citizens?**

**Response:** As per s.3 of this Act, “all citizens shall have the right to information”. It may also be applicable to NRIs after they get dual citizenship. As per this law citizens can apply for information as individuals and not as a group. When applying for information only contact details need to be given and the purpose for which information is being asked does not have to be mentioned. If people ask for information re building plans etc then it lies with the departments, appellate authorities or the Information Commission to decide whether disclosure of that piece of information would prejudicially cause problems for security, sovereignty or integrity of the nation. A building plan for example can be misused. A third party can copy it, patent it and sell it in the open market. This has been happening with genetic engineering, where research is carried out in government laboratories and private bodies are earning the profits.

**Q. As per law case diaries cannot be provided to citizens. Can this information be provided under the RTI Act? Citizens can ask for this information if they have doubts re the investigation process.**

**Response:** As per existing law such information cannot be shared with the public. However, there can be instances of people asking for case diaries or station diaries. In such cases, information can be given if it is shown that the action was taken in good faith as per s.21 of the Act.



**Implementation Schedule for major activities under the Right to Information Act 2005 by Government of Meghalaya**

SN	Work	Time limit	Department/Agency
1.	Identification of Public Authority in each department	31.08.05	All departments
2.	Preparation and publication of 16 manuals by public authority	31.08.05	All departments
3.	Identification and notification of PIOs and APIOs	31.08.05	All departments
4.	Identification and notification of Appellate Officer for purposes of appeal against decision of PIO	10.09.05	All departments
5.	Constitution of State Information Commission	10.09.05	Notification by Personnel and AR department and support services to the Commission by IPR department
6.	Notification of Security and Vigilance Agencies which will be outside the purview of the Act	15.09.05	Information Public Relations Department in consultation with Political Department
7.	Workshop on RTI Act in each district and training "Master Trainers"	15-30.9.05	Meghalaya Administrative Training Institute (MATI)
8.	Preparation of Instruction Manual for implementing the Act	15.09.05	Information Public Relations Department
9.	District-wise training of PIOs and Departmental Appellate Officers	15-30.09.05	Deputy Commissioners and MATI
10.	Preparation of practical guide/manual	20.09.05	Information and Public Relations Department