

THE RIGHT TO INFORMATION ENDEAVOUR FROM SECRECY TO TRANSPARENCY AND ACCOUNTABILITY

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Introduction

The intensity of harassment meted out to applicants who seek information from the public authorities is revealed by the Central Information Commission, New Delhi in its own decision where it was forced to direct making an application less cumbersome¹. In this case, Mr. Shri D S Negi of Dwarka, New Delhi, went to the office of the Chief Engineer (Dwarka Project, New Delhi) to file an RTI application in connection with a water crisis. The applicant was directed to meet the Assistant to Chief Engineer. The Assistant signed the application and marked it to the Public Information Officer (PIO), Superintendent Engineer (SE) (HQ) of the Organization. The PIO asked the applicant to submit an amount of Rs. 10/- in cash, as the Indian Postal Order (IPO) will not be acceptable because of an accounting problem. The application was then marked to Senior Accounts Officer. He in turn marked it to the Accountant and then to the Receipt Clerk. The receipt Clerk simply refused to accept the application and asked applicant to bring a photocopy of the receipt for Rs. 10/- to be attached with the application as proof of payment of the requisite fee. The process therefore took nearly 3½ hrs to simply file an RTI application. This is one of the instances which has been reported and adjudicated by the Central Information Commissioner New Delhi. This case depicts high handedness on the part of public authorities to harass applicants who seek information under the Act, from them. It has been noticed that the PIO or the public authorities always try to manipulate the situation in their favor, because the procedure for the issue of payment of fee under Section 6 of the RTI Act, 2005, is not only uniform, but also provides opportunity to the PIOs/public authorities to harass applicants.

It is well known that there is no uniformity in the payment of application fee and other charges, payable under the RTI Rules framed by various subordinate authorities. The Central Right to Information (Regulation of Fee and Cost) Rules 2005 provides that [update] a fee of Rs. 10 for filing the request. If the applicant is a Below Poverty Line (BPL) Card holder, then no

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1. CIC in Complaint No CIC/WB/C/2006/00178 -14.11.2006 expressed deep concern over the careless attitude in receiving an application under RTI and directed to make easily accessible arrangements for receiving RTI applications over one window or centralized counter.

fee need to be paid. Such BPL Card holders have to provide a copy of their BPL card along with their application to the Public Authority. State Governments and High Courts have formulated their own fee/charges rules on the subject. The Rajasthan Right to Information (High Court and Subordinate Courts) Rules, 2006² envisages that any person seeking information under the RTI Act, shall make an application in Form 'A' to the Authorized Person along with non-judicial stamp, of Rs. 100 duly affixed on/attached to it, which shall be non-refundable. But where the information relates to tender documents/bids/quotation/business contract, the application fee shall be Rs. 500 per application.

The Right to Information (Regulation of Fee and Cost) Central Rules 2005 stipulates the payment of prescribed fee, along with application under Section 6 of the RTI Act, 2005, by Indian Postal Orders/ Cash/ Bank Cheque/ Bank Drafts/ Money Orders. It has also been observed that the majority of the Public Information Officer/APIO does not accept cash, which is the most convenient mode of payment of fee. But PIOs/APIOs always insists upon applicant either to deposit IPO or Bank Draft or Money Order or chalan. The process of procuring IPO, Bank Draft, or Money order, is time consuming and the applicant is required to undergo additional financial burden by paying charges for IPO, MO or Bank Draft.

The Right to Information: Its importance and development in India

The Parliament of India passed the Freedom of Information Act in 2002. However it was never notified till it was repealed in 2005 by the Right to Information Act, 2005. The RTI Laws were first successfully enacted by the state governments of- Tamil Nadu (1997)Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004). The Maharashtra and Delhi State enactments are considered to have been the most widely used. The Delhi RTI Act is still in force. Jammu & Kashmir, has its own Right to Information Act of 2009, the successor to the repealed J&K Right to Information Act, 2004 and its 2008 amendment

The Supreme Court of India in *State of Uttar Pradesh v. Raj Narain*³ has recognized as early as in 1975 the right to information as an important right in a democratic state. The court, while examining the scope and objectives of right to information under Article 19(1) (a) of the Constitution, opined that:

In a government of responsibility like ours, where all the agents of public must be responsible for their conduct, there can be few secrets,

2. Rule 4 Application for seeking information.

3. AIR 1975 SC 865.

everything that is done in a public way by the public functionaries. They are entitled to know, the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, through not absolute, is a factor, which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security. To cover with veil secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for purpose of parties and politics or personal self-interest or bureaucratic routine. The reasonability of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.

Further a Seven Judges Bench of the Supreme Court in the landmark case of *SP Gupta v. Union of India*⁴ reiterated that right to information as a Fundamental Right under Article 19 1(a) of the Constitution. The Court declared that right to information is part and parcel of fundamental right enshrined under Article 19(1) (a) of the constitution and observed that:

The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure 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.”⁵

Right to information or right to know is an integral part of the freedom of speech and expression, a fundamental right guaranteed under Article 19(1) (a) of the Constitution. But the Supreme Court in a leading case of *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd.*⁶ has also recognized right to information as a fundamental right under Article 21 of the Constitution. The Apex Court,

4. AIR 1982 SC 149. See also *Union of India v. Assn. for Democratic Rights*, ((2002) 5 SCC 294); *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, ((1995) 2 SCC 161); and *People's Union for Civil Liberties (PUCL) v. Union of India*, ((2003) 4 SCC 399).

5. *Id.*, Para No. 66.

6. (1988) 4 SCC 592.

while dealing with the issue of freedom of press and administration of justice, held that:

We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform.⁷

The Right to Information Act, 2005: An Overview

The Right to Information Act, 2005 received Presidential assent in June 2005, and came into force from October 13, 2005. The Act covers all central, state and local government bodies and, in addition to the executives, it also applies to the judiciary and the legislature. It covers all bodies owned, controlled or substantially financed, either directly or indirectly by the government, and non-governmental organizations and other private bodies substantially funded, directly or indirectly, by the government. It would seem to include private schools, hospitals and other commercial institutions that have got subsidies in the form of land at concessional rates or tax concessions, among others. The Act also applies to private sector as it provides the citizens access to all information that the government can itself access through any other law. The Act defines information⁸ as “information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.” Right to information, defined in Section 2(j), provides various rights to access information through various modes such as inspection of documents, copies of documents (hard and soft copies), sample of material and raising of questions.

The Act, under Sections 8 and 24, contains certain exemptions from disclosure of information. The matters which are beyond the scope of the

7. *Id.*, Para 34, Also, see Justice M N Venkatchaliah, Report of the National Commission to review the working of the Constitution (2002) Para 6.10.

8. Section 2(i) “record” includes— (a) any document, manuscript and file; (b) any microfilm, microfiche and facsimile copy of a document; (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (d) any other material produced by a computer or any other device;

Act includes the disclosure of information which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with the foreign State or lead to incitement of an offence; or information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court. It also excludes the disclosure of information, which would cause a breach of privileges of Parliament or State Legislature. The provisions of the Indian Official Secret Acts, 1923 are also exempted from the scope of the Act. The Act provides for the setting up of independent Information Commissions, one at the Center and one each in the states, comprising of one Chief Information Commissioner and up to ten Information Commissioners. Complaints against violations of provisions can be made to the Information Commissioner. Public Information Officers (PIOs) are also appointed to accept requisitions and provide information within 30 days after receiving such complaint. Extensions are also allowed in some cases such as when third party is involved. Information pertaining to the life and liberty of a person must, nevertheless, be provided in 48 hours. The Act stipulates penalties for PIOs found to be in violation of the provisions. The information Commission can impose penalties at the rate of Rs. 250 per day, and also penalize for refusals to accept requests, for mala fide destruction of information, knowingly giving false information etc., with and maximum limit of Rs. 25,000. Immunity to PIOs for actions done in good faith is also applicable under the provisions of the Act.

Inadequacies and Hindrances in the Promotion of the RTI Act Protection of Applicant under the RTI from Victimization

A whistleblower may be expressed as someone who exposes wrongdoing, fraud, corruption or mismanagement. In many cases, this could be a person who works for the government who would report misconduct within the government or it could be an employee of a private company who reports corrupt practices within the company. The law that a government enacts to protect such persons who help expose corruption is called a whistleblower protection law. Some countries have already put in place laws to protect whistleblowers or are in the process of doing so. However, the level of protection and the way in which the law operates differs from country to country. The US was one of the earliest to have the Whistleblower Protection Act of 1989, while the UK has the Public Interest Disclosure Act of 1998, and Norway has a similar law in place since January 2007.⁹

9. http://articles.timesofindia.indiatimes.com/2010-03-29/india/28135662_1_public-interest-disclosures-cvc-protection India doesn't have a law to protect whistleblower, visited on May 5, 2011.

It is very clear beyond reasonable doubt that the RTI Act does not provide for any protection to the applicants for use of the RTI. Though the CIC is empowered to award compensation for any harassment, threat or intimidation caused to the applicants for seeking information, in practice this provision is not being utilized in full swing instances of suppression of information and harassment of the employees and applicants are on the increase. It is evident from the incidents that has been occurred in past that the public authority has been trying to suppress the information and coerce the applicant in case the applicant is employed in that organization.

The issue of protection for whistleblowers caught the attention of the entire nation when the National Highways Authority of India engineer Mr. Satyendra Dubey was killed after he wrote a letter to the office of then Prime Minister Shri A B Vajpayee alleging corruption in the construction of highways.¹⁰ It is also evident from the series of instances where more than 10 RTI Activists have been murdered for their active involvement against corrupt activities of bureaucrats, political leaders and contractors' mafia in India. RTI activist Amit Jethwa was killed near the Gujarat High Court in Ahmedabad. Other RTI activities includes such as Datta Patil of Kolhapur (Maharashtra), Vitthal Gite of Beed district, Maharashtra; Sola Ranga Rao of Krishna District, Andhra Pradesh, Arun Sawant of Badlapur, Maharashtra, Shashidhar Mishra of Begusarai, Bihar; Vishram Laxman Dodiya of Ahmedabad, Gujarat, and Satish Shetty of Pune, Maharashtra. Mr. Manjunath Shanmugham, an IIM graduate and a sales manager of the IOC, was also murdered on Nov 19, 2005 for exposing the racket of adulteration of petrol and the mafia behind it.¹¹ This list is not exhaustive and depicts a grave concern need to be taken care immediately.

This view of the Author has been vindicated by a reported case before the Chief Information Commission (CIC), which depicts the ground realities about the conduct of the public authority for suppressing the facts and harassing the applicants under the RTI Act. In one such instance before the CIC, where in November 2005 under the RTI Act, the applicant requested for access to one Inquiry Report, which enquired into the incident relating to various aspects of incidents when, a student of the Banaras Hindu University, had died at Sir Sunder Lal Hospital attached to the University. Both In-charge of administration (PIO) and Appellate Authority under the RTI Act, overruled the submissions of the PIO and thus became deemed PIO under Sub-Section (5) of Section 5 of the RTI Act 2005. Reply was sent to the applicant under instruction from the Registrar denying him

10. *Ibid.*

11. *Ibid.*

the information, thus, disposing of both, Appellant's application and his first Appeal. The CIC in exercise of powers conferred by Section 20(1) of the RTI Act 2005 imposed a penalty of Rs.25, 000/- on Registrar, for denial of information despite the Commission's clear directions.¹² CIC also raised the issue of alleged victimization of the RTI Appellant who had not been given admission to the post graduate course against seats reserved for students of the University. CIC directed that the Assistant Registrar would visit the University to inspect the documents for satisfying the Commission that the non-admission of the Appellant was not in any way linked to the case before the Commission. The Commission directed the Vice-Chancellor to release the compensation amount to the Appellant for three journeys to Delhi and back as directed in its previous order, as required under Section 19(8)(b).¹³ In exercise of powers conferred by Section 19(8)(b) of RTI Act, CIC directed the University authorities to admit the appellant in the Master of Physical Education course with immediate effect and grant him a grace period up to the date of admission for the purpose of attendance and to ensure that an applicant seeking information from the University under the RTI Act 2005 is not victimized in future.¹⁴

The concern of the Author has been reiterated by the Central Information commission. The CIC taking serious note of the situation issued orders in order to overcome the non-cooperation and harassment of RTI applicants and one of the important circulars reads as under:

*Some of the public authorities do not behave properly with the persons who seek information under the RTI Act. Responsibility of a public authority and its public information officers is not confined to furnish Information or but also to provide necessary help to the information seeker, wherever necessary. While providing information or rendering help to a person, it is important to be courteous to the information seeker and to respect his dignity.*¹⁵

The Public Interest Disclosure and Protection of Person Making Disclosure Bill 2010, based on the recommendations of Law Commission Report No. 179, has been introduced in the Lower House of the Parliament on 26 August 2010, but it is very strange to note that this Bill does not

12. CIC/OK/A/ 2006/00163-19.10.2006.

13. CIC/OK/A/ 2006/00163-6.09.2006.

14. CIC/OK/A/ 2006/00163-9.11.2006.

15. Para 1 No.4/9/2008-IR Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) New Delhi Dated the 24th June, 2008. www.rti.gov.in, visited on 5.5.2011.

provide any protection to any RTI applicant, who seek information under the RTI Act 2005.

The objectives of the Act cannot be achieved unless RTI applicants are protected from any harassment that might arise from the operation of the RTI Act. Firstly it is recommended that the Appellate Authority, the State Information commission and the Central Information Commission should be empowered to award exemplary damages in such cases. Secondly the Act should also provide for some protection to those employees who seek information from their organizations. Some provisions on protection of employees especially casual, ad-hoc, part time and other temporary employees, on the issue, which should prevent the public authorities from terminating the services of, except on some serious misconduct after adhering to the *doctrine of natural justice*, such employees for the operation of the RTI Act, should be inserted in the Act. The State Information Commission and the Central Information Commission should be empowered to take suo-motuo cognizance of any such instances of victimization and pass appropriate order, along with exemplary compensation to the victims, on the matter.

Uniformity in the fee structure and simplification of process of payment of fee

At present, the application fee for obtaining information is not uniform all over the country. Application fee in Himachal Pradesh is Rs. 10/-, whereas in Haryana it is Rs. 50/- and in Arunachal Pradesh it is between Rs. 500/- & Rs. 50/- depending upon the type of information to be obtained.

The Central Government has prescribed Rs. 10/- as application fee and Rs. 2/- per page created or copied for obtaining information. However, the different State Governments have prescribed different fee. The application fee thus varies from Rs. 500/- in Arunachal Pradesh to free of cost at village level in Andhra Pradesh. Similarly, some States levy fee for filing appeal, whereas it is free in most of the States. It is evident from the above analysis that although some States have prescribed reasonable fees for obtaining information, in other States, heavy fee has been prescribed, which makes it difficult for the citizens to obtain information. The heavy fee is not only against the spirit of the RTI Act, but also defeats the purpose of the Act.

In Himachal Pradesh fee for inspection of record/document is Rs. 10 per 15 minutes or fraction thereof. Every page of information to be supplied shall be duly authenticated giving the name of the applicant (including below poverty line status if that is the case), and shall bear the dated signatures and seal of the concerned Public Information Officer/

Assistant Public Information Officer supply the information. Fees/ Charges shall be deposited in a Government treasury under the head of account “0070-OAS, 60-OS, 800-OR, 11- Receipt head under Right to information Act, 2005”. Accruals in to this head of account may be separate fund by way of grant-in-aid for furthering the purposes of Act, including of equipment and consumable, providing training to staff etc.¹⁶ After analyzing the provisions of the Tamil Nadu Right to Information (Fees) Rules 2005,¹⁷ the Karnataka Right to Information Rules, 2005¹⁸ and the Kerala Right to Information (Regulation of Fee and cost) Rules, 2006,¹⁹ it has been observed that there is no uniformity, with respect to application fee, inspection fee and modes of payment of such fees, in these states. It is surprised to notice that the Rajasthan Right to Information (High Court & Subordinate Courts) Rules, 2006²⁰ provides such very high application fee, which is beyond the reach of a common man.

Lord Marnoch in *Common Services Agency v. Scottish Information Commissioner*²¹ while examining the scope of Freedom of Information Act, 2000, has rightly pointed that the terms of the Act should be liberally interpreted, keeping in mind intention of the Legislature, and objectives of the Act. He observed that:

...[T]he statute, FOI Act, whose whole purpose is to secure the release of information, should be construed in as liberal

16. Section 5 of the Himachal Pradesh RTI Act, 2005.

17. Rule 3 of the Tamil Nadu Right to Information (Fees) Rules, 2005,

18. Rule 4 of the Karnataka Right to Information Rules, 2005,

19. Rule 4 of the Kerala Right to Information (Regulation of Fee and cost) Rules, 2006.

20. Rule 4 of the Rajasthan Right to Information (High Court & Subordinate Courts) Rules, 2006 stipulates that “Any person seeking information under the Act shall make an application in Form ‘A’ to the Authorized Person along with non-judicial stamp, of Rs. 100 duly affixed on/attached to it, which shall be nonrefundable. Where the information relates to tender documents/bids/quotation/business contract, the application fee shall be Rs. 500 per application”.

21. Scotland [2006] CSIH 58, December 1,2006. (x)the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations; (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made; (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes; (xiii) particulars of recipients of concessions, permits or authorizations granted by it; (xiv) details in respect of the information, available to or held by it, reduced in an electronic form; (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use; (xvi) the names, designations and other particulars of the Public Information Officers; (xvii) such other information as may be prescribed; and thereafter update these publications every year; c)publish all relevant facts while formulating important policies or announcing the decisions which affect public; and d) provide reasons for its administrative or quasi-judicial order.

a manner as possible and, so long as individual and other private rights are respected, and the cost limits are not exceeded, I do not see myself any reason why the Commissioner should not be accorded the widest discretion in deciding the form and type of information which should be released in furtherance of its objectives.

It is evident from the above analysis that some states charge different fees and modes of payment are also varied. Application fee should be minimal and uniform all over the country. Similarly, the charges for obtaining information should also be minimal, uniform and reasonable so that the same are not beyond the reach of common man. Sections 6 and 7 of the RTI Act should be amended requiring the States not to charge more fee than the prescribed by the Central Government. However, the State Government may be at liberty to charge lesser fee than prescribed by the Central Government. It has been noticed that there are different modes of payment of fee under the Act, which may provide an opportunity to the public authority to victimize applicants and moreover the existing process of payment is not convenient to general public. Therefore there is a need to simplify the process for the benefit of common man.

Penal provision for violation of Section 4 of the RTI Act

The Public Authority is required to make pro-active disclosure of all the relevant information as per provisions of Section 4²². Section 4 (1) Every public authority shall -

- a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this*

22. Section 4 (1) Every public authority shall -

- a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;*
- b) publish within one hundred and twenty days from the enactment of this Act,—*
- (i) the particulars of its organisation, functions and duties;*
 - (ii) the powers and duties of its officers and employees;*
 - (iii) the procedure followed in the decision making process, including channels of supervision and accountability;*
 - (iv) the norms set by it for the discharge of its functions;*
 - (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;*
 - (vi) a statement of the categories of documents that are held by it or under its control;*
 - (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;*

Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

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

- (i)* the particulars of its organisation, functions and duties;
- (ii)* the powers and duties of its officers and employees;
- (iii)* the procedure followed in the decision making process, including channels of supervision and accountability;
- (iv)* the norms set by it for the discharge of its functions;
- (v)* the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- (vi)* a statement of the categories of documents that are held by it or under its control;
- (vii)* the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

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- (viii)* a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
 - (ix)* a directory of its officers and employees; *(x)* the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
 - (xi)* the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
 - (xii)* the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
 - (xiii)* particulars of recipients of concessions, permits or authorizations granted by it;
 - (xiv)* details in respect of the information, available to or held by it, reduced in an electronic form;
 - (xv)* the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
 - (xvi)* the names, designations and other particulars of the Public Information Officers;
 - (xvii)* such other information as may be prescribed; and thereafter update these publications every year;
- c)* publish all relevant facts while formulating important policies or announcing the decisions which affect public; and

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

of the RTI Act, unless the same is exempt under the provisions of Section.8(1). In fact an information regime should be created such that citizens would have easy access to information without making any formal request for it. Sub section (2) and (3) of the Section 4 of the RTI Act requires for continuous improvement of publication of voluntary disclosures

It has been noticed that public authorities covered under the Act, do not seriously implement the provisions of section 4 of the Act, because there is no penalty provided for the violation. The CIC seems to be aware of this serious issue as signifies by its circular which reads as:

The Central Information Commission in a case has highlighted that the systematic failure in maintenance of records is resulting in supply of incomplete and misleading information and that such failure is due to the fact that the public authorities do not adhere to the mandate of Section 4(1)(a) of the RTI Act, which requires every public authority to maintain all its records duly catalogued and indexed in a manner and form which would facilitate the right to information. The Commission also pointed out that such a default could qualify for payment of compensation to the complainant. Section 19(8)(b) of the Act gives power to the Commission to require the concerned public authority to compensate the complainant for any loss or other detriment suffered. The CIC directed that the proper maintenance of records is vital for the success of the Right to Information Act.²³ It is mandatory for all the public authorities to adhere to the principle of maximum disclosure, and furnish the information, as and when sought by the citizens, for which they do not have to charge any extra

23. N0.12/192/2009-1R Government of India Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) New Delhi Dated the 20th January 2010.

*money, other than what has been prescribed by the Govt. under the RTI fees and costs rules.*²⁴

RTI applicant has to prove that he suffered loss due to such non-display and then only he may be awarded some compensation. A citizen can complain because the Department has not updated their information, thus causing damage and risk²⁵. It is clear that the Act puts an obligation upon public authority to provide information as mentioned in section 4, on its web sites. But the Act does not provide any penalty for violation of Section 4 of the Act. So it is the need of the hour to provide for some penal provision for the violation of Section 4 of the Act, which would ensure effective compliance on the issue and would also minimize the numbers of applicants from approaching Public Information Officer as the information would be displayed/made available to them in convenient way.

It is also recommended, as a preventive measure, that besides penalty for violation of Section 4, non-display of information under Section 4 should be treated as deficiency in service under the Consumer Protection Act, 1986 and the Consumer Forums constituted under the Consumer Protection Act 1986, should be empowered to take cognizance of such failure in case of loss suffered by applicant due to non display of information under section 4 of the RTI Act.

Regulation of inspection of documents under the RTI Act

Right to Inspection²⁶ an important facet of right to information, which includes inspection of any documents or material, has been recognized under Section 2(j) of the RTI Act. But there is no rule or relation on the subject which can regulate this right of inspection. An analysis of section 2(j), Sections 6 and 7 of the Act depicts that none of the provisions provide time frame for inspection of documents. Section 7.²⁷

24. 204/IC(A)/2006- Government of India Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) New Delhi dated 25.8.2006.

25. CIC/WB/C/2006/00081- 13 July,2006

26. Section 2(j) of the RTI Act. (a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made.

27. Section 7. (1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of Section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9: Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. (2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or

Section 7. (1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of Section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9: Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. (2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request. (3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving - provides for time limit in which the PIO must furnish the desired information to the applicant but silent on the time limit for inspection of files or documents under the Act. Section 6²⁸ stipulates the procedure for submission of RTI Application before

State Public Information Officer, as the case may be, shall be deemed to have refused the request. (3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving — (a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made

28. Section 6.(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to - (a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority; (b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her: Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing. (2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. (3) Where an application is made to a public authority requesting for an information, - (i) which is held by another public authority; or (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer: Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

PIO/APIO for furnishing information under the ambit of the RTI Act whereas it does not contain any provision as to procedure for submission of application for inspection. Lack of adequate process for inspection provides opportunity to Public Authority to manipulate the documents/materials sought to be inspected by the applicants. The Author is of the opinion that the inspection of documents/materials should be allowed within 48 hours of submission of application or receipt of RTI application for inspection, by the PIOs. It is also recommended that some provision for inspection such as form of application form, time limit for inspection and procedure for submission of inspection application, and process of inspection of documents/materials should be incorporated in the RTI Act or RTI Rule.

Final Thoughts

The RTI Act is a historical and a special enactment that recognizes rights of citizens for seeking information from public and selected private authorities. The Act was enacted to make a turning point in this nation's democratic development. It has long proven to be a key component of a healthy democracy because it empowers citizens with the right to demand what activities and decisions are being made, to promote national interest. The Act has given hope to society that reduces its corruption at all levels of bureaucracy. The movement has been gaining momentum through the innovativeness and perseverance shrouded by activists in various States on its use. The State Governments and Public Authorities are still in the process of creating the needed infrastructure in their departments to provide information sought by any agency. But the State RTI laws left much to be desired in implementing the enactment and they are subject to individual interpretation in each State. Action against errant officials is still dependent on the already discredited and cumbersome proceedings of the civil service conduct rules.

It is recapitulated that the penal provision for the violation of Section 4 should be inserted in Section 20. There is a need to ensure uniformity in fee, cost of providing information and inspection charges payable by applicant to the Public Authority under the Act. It is evident that procedure for payment of fee under the Act is complex and inconvenient for general public, where they are required to pay fee by different modes, which gives opportunity to the PIOs to harass applicants. Cash payment should be accepted as the only mode of payment of any fee payable under the Act, which is very convenient and applicant is saved from bureaucratic hassle in respect to payment of application fee /inspection/appeal fee through various modes. Alternatively the author strongly recommends that applicant

should not be charged anything for submitting application under the RTI Act, 2005. It is also observed that the Act does not provide any specific qualifications for the designation of the APIOs/PIOs, therefore it is strongly recommended that permanent employee, not casual, or part time or ad-hoc or temporary employee should be designated as PIO/APIO. It is evident from the existing ground reality that temporary/ad-hoc employees are puppet in the hands of public authority and they can never go against the interest of their organizations and cannot effectively enforce the appropriate department to furnish desirable information under the RTI Act, otherwise their job would be at stake. Further imposition of penalty on them, in case of violation of any provision of the Act, would aggravate their condition.

It is proved beyond doubt that the Right to Information Act has become a 'Brahmastra' (weapon) of general public against corrupt bureaucrats. The right to information has certainly created an impact on accountability and transparency in the administration of the nation. The Act, if effectively implemented, could change the nature of governance in the nation. The process of transparency and accountability in the governmental institutions should be initiated on priority, which would bring a sense of empowerment to the citizens as to verify the government's performance and accountability. Right to information is a facet of the doctrine of accountability and transparency, which is in sprouted form and need to be nourished well for effective and efficient implementation. Awareness regarding the provisions of the Act should be created through various means of media. Success of the program depends upon the alertness of the citizens. Proper propagation and promotion of the subject is the key in reducing corruption and promoting transparency and accountability in the era of globalization and liberalization.