

# **SAFEGUARDING THE RIGHT TO INFORMATION**

**Interim Findings of the People's RTI Assessment 2008**  
October 2008

RTI Assessment & Analysis Group (RaaG)  
and  
National Campaign for People's Right to Information (NCPRI)

In collaboration with

Tata Institute of Social Sciences (TISS), Mumbai, Centre for the Study of Developing Societies (CSDS), Delhi, Association for Democratic Reforms, Bangalore, North Eastern Network, Guwahati, ASHA, Varanasi, JANPATH, Ahmedabad, United Forum for RTI Campaign, Hyderabad, Meghalaya RTI Movement, Shillong, Centre of Action Research and Documentation (CARD) Bhubaneswar, School for Democracy, Jaipur

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## **I. INTRODUCTION**

### **WHY THE PEOPLE'S RTI ASSESSMENT 2008?**

Although India's Right to Information Act has now been in existence for three whole years, there has as yet been no systematic, nationwide independent assessment of who is using it, to what purpose, and how it is functioning. The only knowledge citizens have is anecdotal, or is derived primarily from Government data. Neither has there been a detailed evaluation of how other societal actors, such as the media, the courts, the corporate sector and non-governmental organisations are affecting, or being affected by, the Act.

The Right to Information Assessment and Analysis Group (RaaG), in collaboration with the National Campaign for People's Right to Information (NCPRI) and various other national and regional groups and institutions, has initiated the People's RTI Assessment 2008 to undertake precisely such an exercise. The goal is to ascertain how India's nascent Right to Information regime might be further strengthened, by examining a variety of inter-related issues. The specific objectives of the assessment <sup>a</sup>re:

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 uses
  - 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, 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. Conformity with the act of various public authorities, especially in terms of voluntary (pro active) disclosure of information
  - g. The role of the appellate authorities 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 actions to make the RTI regime stronger in India.
4. To develop a replicable assessment methodology and a sustainable process for participatory and transparent assessments.

### **STRUCTURE, METHODOLOGY, SAMPLING: A BRIEF DESCRIPTION**

The People's RTI Assessment 2008 seeks to fulfil these and other objectives through the following major components. It proposed to survey and otherwise access information from the following key RTI stakeholders:

1. **Citizens:** To understand and assess whether citizens consider access to information important for resolving their problems, to assess awareness levels among them on the RTI, and to understand other issues and perspectives related to access to information.
2. **Applicants and appellants:** To understand and assess the ease of accessing information through the RTI process, especially to understand constraints and challenges, and capture user perceptions of the effectiveness of the Act and the infrastructure developed to facilitate the Act.
3. **Government officials and other Public Authority functionaries (Public Information Officers and Heads Of Departments):** To capture perceptions of officials towards the RTI. The objective is 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 Act.
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 of them. The objective is to study the extent to which Public Authorities have adapted their infrastructure to comply with the RTI.
5. **Information Commissions** – All Information Commission decisions for 2007-2008 are being collated and analysed to assess the quality of the second appeal process. A database is being created which will later be expanded to cover all decisions. An analysis is being done on the time lines, the rate of appeals being allowed and refused (wholly or partly), the details of the appeals process, the frequency of penalties and compensations, and the final outcomes in terms of compliance with the commissions' orders. An effort is also being made to generate reports on each state and the Central Information Commissions to assess the quality of their interventions in the RTI process, and the resources and facilities available to them for carrying out their work.

**In addition, the assessment also involves:**

1. **Analysis of State RTI rules and regulations** – Desk research and RTI applications are being used to assess the RTI rules notified by various states and competent authorities (i.e. The Supreme Court, the Parliament, High Courts and , Legislative Assemblies).
2. **Case studies** – Desk research and field contacts are being used to source RTI case studies from throughout the country, in an effort to collect data on the various ways in which the Act is being used and to what effect. Of particular interest are cases representing innovative or extremely effective use of the Act, amusing or human interest stories, use of the Act by weaker segments of society/ special groups or by social movements, and government efforts to promote the Act. The case studies will be published as an RTI compendium.

- 3. Website survey of Section 4 compliance** - The departmental websites of the 240 state and district level public authorities covered in the urban survey are also being evaluated for Section 4 compliance. This is to ascertain whether Public Authorities have begun to 'pro-actively' report the detailed operational, financial, and service-related information the Act requires of them.

The remaining five components assess how other societal actors view, use, or are being impacted by the Right to Information Act. These are:

- 1. RTI and the Media** – RTI press coverage is being analysed across a selection of States, to understand the manner in which the media is approaching, promoting, and using the Act.
- 2. RTI and the Courts** – CIC/SIC decisions challenged in court by appellants or governments are being examined, to determine who is initiating such case, why, and how the judiciary is responding.
- 3. RTI and International Donors** – International donor public disclosure policies are being vetted in the context of the Right to Information Act, to assess their appropriateness and adequacy and how they compare with the letter and spirit of the Indian RTI Act..
- 4. RTI and Non-Governmental Organisations** – Similarly, the disclosure policies and practice of non-governmental organisations will be assessed. Of interest are NGOs that are public authorities and others who are propagating the RTI – to assess how far they practice what they preach.
- 5. RTI and the Corporate Sector** – Corporate sector disclosure policies and practice will be assessed, especially in terms of their ability and willingness to comply with provisions of the RTI Act and to allow governments to be transparent with information supplied by them. Desk research and interviews will also be conducted to determine corporate perceptions on the Act, and its implications.

### **Methodology and sampling**

The study covers 10 states across the country, and Delhi.

In each state, the state capital and 3 districts are being surveyed. In each district, a further 8 villages are being surveyed.

The 10 states and their sample Districts are:

1. Assam – *Dibrugarh, Karbi Anglong, Nalbari*
2. Andhra Pradesh – *Ananthapur, Nalgonda, Visakhapatnam*
3. Gujarat – *Kutch, Narmada, Mahesaha*

4. Karnataka – *Bijapur, Dakshin Kannada, Haveri*
5. Maharashtra – *Aurangabad, Yavatmal, Raigad*
6. Meghalaya – *South Garo Hills, West Khasi Hills, Ri Bhoi*
7. Orissa – *Kalahandi, Deogarh, Kendrapara*
8. Rajasthan – *Dungarpur, Jhunjhunu Karauli*
9. Uttar Pradesh – *Azamgarh, Bijnor, Jhansi*
10. West Bengal – *Burdwan, Cooch Behar, Uttar Dinajpur*

*In addition, the urban area of Delhi is also being surveyed.*

### **Box 1. How were sample States, Districts and Villages chosen?**

**States** - Five states (Andhra Pradesh, Assam Maharashtra, Orissa, and Uttar Pradesh) were deliberately chosen to overlap with the sample of States in which the Department of Personnel is conducting its own evaluation of the RTI. In this way, both sets of data can be compared to provide a balanced and holistic picture of the working of the RTI in these states. The other five states (Gujarat, Karnataka, Meghalaya, Rajasthan, and West Bengal) were chosen so as to ensure that all corners of the country were represented, that there was a mix of states with varying levels of RTI intensity and differing political regimes.

Delhi was also included in the sample, given its national importance and the fact that it has received a very high number of applications.

**Districts** – Districts were stratified on the basis of literacy, SC and ST population, and geographical spread within the State, and then randomly sampled. The sampling used 2001 Census data.

**Villages** – Within the districts, chose blocks to ensure that they were not bunched together and that they were geographically dispersed. On the basis of the latest census data available, a list of all the villages in a block was generated, out of which four villages in each block were randomly sampled.

### **Public Authorities**

A total of **400** Public Authorities (PA) are being surveyed across the country- 5 per state capital, 5 per district and 5 per sub-division and village and 10 at the central government level. The PA survey includes:

Structured interviews with Public Information Officers (PIO) and Heads  
Department

Inspection of the premises to assess compliance with section 4 (pro-active disclosure)

Filing of RTI applications to assess ease of filing an application in a public authority.

Website searches are also being undertaken to determine compliance with section 4 of the RTI Act.

Three separate sets of PAs are being surveyed at the district and village level; state headquarters and the central government level. Rural PAs include

- 1) Pradhan's office
- 2) Patwari's office
- 3) Village school
- 4) Ration shop
- 5) Sub-health centre, or village health worker, or Primary Health Centre

At the District level, it conducts the same exercise in the district-level equivalents of these agencies:

- 1) District Collector's Office
- 2) District Education Department
- 3) District Civil Supplies Department
- 4) District Medical Officer or Hospital
- 5) Zila Parishad/ District Council where there is no panchayat system,

Thus, across the 10 States, 30 Districts and 240 villages, all rural field teams will collect data on and conduct interviews in all these Departments.

**At the State headquarters the PAs to be studied are:**

1. Police Department
2. Department of Land and Revenue
3. Public Works Department
4. Department of Rural Development and Panchayati Raj
5. Department of Women and Child Development

In each State capital, survey teams will also assess 3 Central Government offices that have state level offices. These are:

1. Ministry of Railways
2. Ministry of Environment and Forests
3. Ministry of Agriculture

These three Central Government offices are also amongst the ten Central Government Public Authorities that the Urban Survey will assess at the national level, which are:

1. Ministry of Home Affairs
2. Directorate-General of Foreign Trade
3. Ministry of External Affairs
4. Ministry of Environment and Forests
5. Ministry of Culture
6. Department of Disinvestment
7. Ministry of Agriculture
8. Ministry of Railways
9. National Commission on Backward Classes
10. Department of Personnel and Training

**Box 2: How State and Central Government 'Public Authorities' were chosen**

The common set of Public Authorities was randomly sampled by choosing a representative set of 'high RTI applications-receiving intensity', 'medium RTI applications-receiving' and 'low RTI applications-intensity' government agencies.

Data on the 'RTI-intensity' of individual public authorities was culled from State Information Commission Annual Reports, providing a break-up of the number of RTI applications received by all the State-level Government agencies under their jurisdiction. All agencies were then categorised as high-, medium- and low- RTI intensity. A representative sample of ten public authorities were chosen across these three categories at the Central level, and five were chosen at the State level, as discussed above.

While, ideally, this sampling should have been based on data drawn from the Annual Reports of all the State Information Commissions in the 10 sample States, most of these were not available in May 2008 – when RAAG conducted this exercise. Of the 10 sample states, only 3 – that is, Orissa, Andhra Pradesh, and Maharashtra<sup>1</sup>, and the Central Information Commission, had uploaded the annual reports for both 2005-2006 and 2006- 2007. As of May 2008, one or two commissions had not yet published their 2006-2007 reports. In other cases, while the reports of some Information Commissions were ready, they could not be made available to us until the State Legislature had approved them.

**Applicants and Appellants**

The study is also surveying **8000** applicants and appellants across the 11 states through structured interviews. To identify applicants, over 200 RTI applications have been filed across the 11 states in over 200 sample Public Authorities requesting photocopies of names and addresses of RTI applicants.

**Citizens**

Focus group discussions have been conducted in 216 villages and 108 municipal wards in 9 States, to ascertain whether rural populations consider access to information important for solving some of their main problems, and their familiarity with, and use of, the Right to Information Act. These discussions were used to identify rural RTI applicants and appellants, who were subsequently interviewed for their experiences.

Similarly, street corner interviews will be conducted in urban areas to assess awareness levels and capture public perceptions about the RTI.

In addition, the 200 odd RTI applications filed are being tracked and analysed to assess their response time and efficacy.

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<sup>1</sup> Since the Maharashtra SIC annual report was in Marathi, we had to rely on press reports that detailed the number of applications that were received by individual authorities.

## **CURRENT STATUS AND PRELIMINARY FINDINGS**

### **1: RURAL SURVEY**

Running through July and August, the Rural Survey has now been completed in all of the 10 sample states, excepting West Bengal.

Focus Group Discussions have so far been held with village communities across more than 200 villages and with urban communities in more than a 100 municipal wards, in an effort to gauge the extent to which the villagers perceive information to be vital in solving their problems, the frequency with which the Right to Information Act is being used in rural areas, and to identify applicants and appellants. RTI applications were also filed to gauge the ease of this process at the rural level.

Rural PIOs and HoDs were interviewed to assess 'supply side' capacity and constraints, as also attitudes, in responding to RTI requests.

### **PRELIMINARY FINDINGS**

Preliminary findings are based on data entry for six of these nine states (Assam, Karnataka, Meghalaya, Orissa, Rajasthan and Uttar Pradesh). Some of the key points emerging are:

***Information key to empowerment*** - They indicate that rural residents overwhelmingly see information as key to solving village problems. In the over 200 focus group discussions in rural areas and municipal wards in district head quarters, nearly two thirds of the groups participating said that access to information would help solve many of their problems.

***NGOs/ TV primary channel of RTI education*** – 117 applicants were identified across these 144 villages spread across six districts. A fourth of the applicants said they heard about the RTI from NGOs, and another fourth from the television. A few had heard about it from government officials, as also from a booklet published by the National Book Trust last year. Most applicants had relied on help from friends, family or NGOs in filing their RTI applications. MPs and MLAs were mentioned by only one applicant so far, as having either informed or helped them.

***Response rates*** - More than two thirds of the 110 applicants responding to this question had received a response to their application. Of those who received the response, nearly two thirds got some information and nearly half got full information.

Interestingly, nearly one third of the applicants responding said that their problem had been solved even though they had received no information or partial information. In contrast, of those who had received all the information they wanted, about two thirds said

that the information had resolved their problem , whether fully or partially, pointing – once again – to rural citizens' perception that information is powerful.

***First appeals*** - of the nearly 50 applicants who did not get information and responded, about half filed a first appeal. Of those who did not file a first appeal, three fourths said that they did not know whom to appeal to.

***Lack of knowledge impedes second appeals*** – Rural applicants have also begun to resort to second appeals. 15 second appellants were identified across these 144 villages, and were interviewed..

***Low success rate in appeals*** – Of the 15 second appellants interviewed across these 6 states, only 3 said that they had got all the information they had wanted whereas 5 received none. While the latter felt the relevant PIOs should have been penalised, this was imposed in only 3 cases, 2 in Orissa and 1 in Assam. Despite their lack of success with the RTI, however, appellants were overwhelmingly (11 out of 15) in favour of using the RTI again.

***Availability of PIO:*** In the sample, each state should have had 165 PIOs available. However, our field teams could find as an average a third actually available. The best availability was in Karnataka, followed by Rajasthan. The worst was in Uttar Pradesh.

***Poor RTI signage*** – Field teams visited 548 public authorities at village, block/sub-division, and district levels to interview PIOs. About half of these had no signage explaining who the PIO was and during what hours he/she would be available to receive RTI applicants.

***Many PIOs don't know they are PIOs*** – An attempt was made to contact 426 PIOs, of which more than four fifth were available, but of these more than one third did not know that they were PIOs! Of the 223 PIOs responding to this question, almost a quarter said that they did not want to be a PIO. Of PIOs that wanted to be PIOs, nearly two thirds said that they had wanted to be PIOs to “support the RTI”. A few said that being a PIO gave them power and recognition.

***Fear of RTI workload unfounded*** – Those PIOs who said they had not wanted this function largely cited heavy workload as their reason. However, their fears appear to be completely unfounded. A large majority (more than 70%) of PIOs and Heads of Department said that they spend less than one to two hour per week on RTI-related work. This is an average of just 15 - 25 minutes per day on RTI work.

***Lack of training a major problem*** – A third of the PIOs responding cited lack of training, lack of manuals and materials, and unfamiliarity with the law as key problems impeding their ability to effectively service RTI requests. Interestingly, less than 15% of the PIOs cited deficient applications or too many applications as an impediment.

As it turns out, only around 40% of the PIOs responding stated that they had received some training in RTI. Unfortunately, more than 40% of the PIOs also admitted that they did not even have a copy of the RTI Act!

***Transparency with registers*** - Field teams found more than 40% of the PIOs not willing to let them inspect office registers. In nearly half the cases in which inspection was not permitted, PIOs cited non-availability or destruction of records as the reason.

***Experience of Interaction with PIOs*** – Of the about 50 responses from among those who filed RTI applications, nearly three fourths said that the PIOs were not helpful and asked for reasons why they wanted the information, even though this question is specifically prohibited by the RTI Act. .

***Record-keeping is slowly beginning to improve*** - Also heartening from these statistics, however preliminary, is that the Right to Information Act appears to have begun to influence the manner in which Government records are kept, even if slowly. Nearly 60% of the PIOs responding confirmed that there were RTI-induced change in departmental record-keeping, in terms of improved record-keeping.

***Applicants Profile*** – Gender bias: Of the nearly 100 respondents, more than 90% applicants were males.

Education Levels: Interestingly, about a third of the applicants had only school education, to various levels. One was illiterate.

Social groups: Of the applicants, about 20% were members of scheduled tribes and castes, and about 30% were members of other backward classes.

Economic Strata: About 20% of the applicants had BPL or antyodaya ration cards.

## **2. URBAN SURVEY**

RTI applications have been filed in PAs of the Central Government, 10 state governments and Delhi. However, the current analysis is based on applications received by 305 PIOs in 6 states, the Central Government and Delhi. These applications are addressed to the sample of public authorities listed above and also included district level public authorities. The objective was to assess the ease of accessing information through the use of the RTI Act. The applications filed asked for lists of RTI applicants and appellants that have filed applications in the respective PAs, along with data on the total number of applications and appeals the PA received since 2005. The application also requested details of the nature of responses, and copies of all the applications, the appeals, and orders of the first appellate

To assess the ease of applications, the RAAG team tracked these applications for four months to assess speed of responses, nature of response, process of accessing information based on the response and finally, the first appeal process.

Some interesting findings emerging from the Urban Survey's RTI filing process are:

**Response rates** – Nearly three fourths of the applications filed received responses. However, the responses were somewhat slow in coming. In only a third of the cases where the responses were received, were they received within the stipulated time period of 30 days.

**Access to information-** Of the total responses received, three-fourths furnished information directly or upon receiving payments for photocopying. About half of the total applications filed received positive responses. However, many difficulties were encountered in payments for photocopying and other fee demanded (see box below)

***Variations across Centre, State and District PAs–***

Overall, the central government responded much more quickly and shared much more information than state governments. The Ministry of Environment and Forests and the Railways stand out for speediest responses on a large number of applications. Nearly 3/4<sup>th</sup> of the RTIs filed were responded to within 30 days and in over half the cases, information was furnished.

At the state level, Meghalaya stands out as the quickest, the most compliant, and also the politest amongst all the states surveyed, in responding to RTI applications- the largest percentage of responses with all the information requested were received from Meghalaya.

Overall, districts appear to be much slower, and much less efficient in responding to RTI applications than states. Meghalaya, and Karnataka stand out for quickest responses at the district level.

PA level analysis suggests that the police department is overall the slowest to respond to RTI applications. The largest number of rejections also came from the police. Interestingly most of these come from Delhi police. Revenue department and the women and child department come a close second to the police.

**The RAAG Team's practical observations on the RTI filing process**

In filing and appealing this vast diversity of applications, the RAAG team confronted four major challenges, which would certainly act to stymie RTI applications by those with less resources than we had.

**Plethora of state rules and payment modes** – As we discovered through hard experience, every State has its own set of RTI fee and mode of payment rules. In some States, the application fee is Rs 10 and can be paid by IPO; in others it is Rs 20 and can only be paid by Demand Draft or a court fee stamp issued in that particular state. Many of our applications were thus returned, and we had to pore over the plethora of differing State rules to ensure that we got it right the second time. Similarly, some States require that only treasury challans be used to pay for requested

information, which required many trips to Government offices and officials, but without much success. (This issue is discussed in more detail in the next section).

**Poor information on First Appellate Authority** - In many states, it proved very difficult, if not impossible, to find the name and address of the First Appellate Authority for the departments in which we filed RTIs. Almost none were listed on the departmental website, and many are not listed on the State RTI or SIC portal either. This was especially true at the district level.

**Appealing deemed refusals** – While the RTI Act binds the PIO to inform the applicant who the First Appellate Authority is in case of a rejection, the absence of publicly-available FAA information becomes especially problematic in deemed refusals. Since, in such cases, the applicant receives no response at all from the PIO, he or she is constrained to appeal to the FAA. Thus, if FAA information is not easily available, it becomes a particular handicap in taking forward an application.

**Unfamiliarity with the concept of a PIO** – Confirming the rural survey finding that many PIOs do not know they are PIOs, many of our West Bengal district applications came back unopened. The post master's remark was that the application had been rejected by the District Collectorate, because no such official existed.

**Gender bias** – Given the dominance of male applicants, PIOs appear to be convinced that anyone who files an RTI application MUST necessarily be male. Although RAAG RTI applications were all filed by women, unfailingly all the responses addressed us as 'Mr'. Equally amusing, but a poor reflection on attention to detail in public authorities, is that most responses completely misspelt and distorted our names, even though our RTI applications had all been typed to eliminate any such possibility. Bincy thus variously became Binoy, Vinay, Biceney, Binno, Bissy, etc!

The survey of urban applicants, PIOs and Heads of Departments will begin across these 11 States and Central Government agencies in the third week of October. 160 urban applicants have already been interviewed in Delhi, and the data is currently being analysed. Additionally, street corner interviews will be held with urban communities.

### **3. ANALYSIS OF RTI RULES MADE BY STATES AND HIGH COURTS**

*Background* - The RTI empowers State Governments and Competent Authorities to frame rules to operationalise the Act, as also to educate both Government functionaries and citizens about the Act. These rules are critical, since they detail application fees, payment for information requested, and mode of payment. Moreover, the RTI Act<sup>2</sup> states that the application fee shall be "reasonable", so as to facilitate the use of the Act by ordinary citizens.

The People's RTI Assessment 2008 is analysing the RTI rules made by the Central and state governments (appropriate government) and the Supreme Court, High Courts, the Parliament and state legislatures (competent authorities). to determine whether they keep with the Act in letter and in spirit, and how people and transparency friendly they are..

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<sup>2</sup> See section 7(5)

The necessary data was collected through desk research and by filing RTI applications asking for the required information.

The analysis of High Court RTI rules is now almost complete, as is that of the variety of RTI-related payment modes required by individual states.

## **PRELIMINARY FINDINGS**

*High Court RTI rules* – Of India's 21 High Courts (excepting in Jammu and Kashmir), RTI rules have been framed for at least 17 (Allahabad, Andhra Pradesh, Assam, Chhattisgarh, Delhi, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Kolkatta, Madras, Mumbai, Orissa, Patna, Punjab, Haryana, and Rajasthan).

A detailed analysis of these rules suggests that many of these rules seem to be in violation of the RTI Act, and some go beyond the scope of the RTI Act, under which they have been framed.

For example, the High Courts of Karnataka, Chhattisgarh, Delhi, Gujarat, Punjab and Haryana have through the rules, sought to add exemptions over and above the exemptions specified in the RTI Act, specifically in section 8(1) and 9. These High Courts have also sought to set up, through the rules, an appeals process which is at variance with that laid down in the RTI Act. The RTI rules of the High Courts of Delhi, Kolkatta, and Gujarat also ignore the penalties specified in the RTI Act and specify their own penalties which are at variance with the ones specified in the RTI Act..

Similarly, the High Courts of Patna, Punjab & Haryana, Gujarat, Delhi, and Himachal Pradesh have framed rules that explicitly violate Section 6(3) of the RTI Act. Whereas the RTI Act says that where a PIO receives an application that in whole or part asks for information that is with some other public authority, the PIO must transfer that information to the concerned PIO within 5 days. However, the rules of the said High Courts state that all applications shall be rejected if the information they seek is outside the jurisdiction of the public information officer. These rules go on to declare that applications will also be rejected if the information they seek can be obtained under High Court rules or other General rules (Civil/Criminal) operational in a High Court. This is despite the fact that the RTI Act specifies that where there is an inconsistency with any other law, the RTI Act will prevail (section 22).

All this is despite the fact that there re several rulings of the Supreme Court of India saying that rules cannot go beyond or modify the statute under which they are framed.<sup>3</sup>

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<sup>3</sup> For example, Vasantlal Maganbhai Sanjanwala vs the State of Bombay and Ors; General Officer Commanding-in-Chief and Anr. Vs. Dr. Subhash Chandra Yadav Anr. Civil Appeal No. 754 of 1988; Indian Express Newspapers (Bombay) Pvt. Ltd. and Others etc. etc. v. Union of India and Ors. 1984 ; Kerala Samasthana Chethu Thozhilai Union vs. State of Kerela (2006) 4 SC 327

*Modes of payment* – In filing RTI applications in states other than the one you reside in, a major problem is the transmission of application fee and the additional fee that is to be paid for photocopying etc.. Different states prescribe different modes of payment ( and different rates of payment). In some states they only accept treasury chalangans, but making treasury chalangans in Delhi for other states has proved to be nearly an impossible task and despite spending nearly a week running around, we have not yet been successful. Others demand court fee stamps or non-judicial paper of their state – which of course is not available in Delhi or in any other state!

Demand Drafts are also sometimes problematic, since these can only be accepted if made in the name of a specifically-designated official and the name of the designated officer is often not available, not even on the PA website or the State RTI portal. The RAAG team had to call up each department, and even then it was difficult to get this information. In many cases, we were thus compelled to request our teams in the concerned state to make payment on our behalf. But this is not possible for all citizens to do.

## **5: RTI CASE STUDIES**

RAAG has now collected some 5,000 case studies from all across the country in a further effort to understand who is using the Act, to what end, and what the outcomes have been. While thus far, case studies have been culled primarily from the national Hindi and English press, and by looking at relevant websites, mailing lists and blogs, attention is now turning to collecting more stories from the vernacular press as well.

These case studies show myriads of citizens using the Act in previously unknown ways, disproving the misperception that only RTI activists use the Act. (Some of the more interesting case studies are being distributed separately). Since the Act was born from people's needs, it has been branching out continually as more and more people use it. For example, while it may strengthen some people's Right to Life by helping them answer ration-related questions, it also helps others close down a polluting factory. In some cases, applicants faced threats, not all of which were 'paper tigers'. In others, a larger group came forward to support an individual's application. There are even interesting cases of Internet users forming their own online RTI support groups to help each other fill applications.

Similarly, there are extremely encouraging stories of RTI success by individuals or groups that are generally stonewalled by the Government, such as women, SCs and STs, people coping with physical challenges. Examples include economically-weaker sections using it to get school admissions for their children, a visually-challenged person using it to question his village panchayat, a ninety year old woman to get her passport, and supposed beneficiaries of the Indira Awas Yojna to avail of this scheme.

Other stories are emanating directly from field groups throughout the country. Many people's movements, citizens' groups, and non-governmental organisations now rest their work heavily on the Right to Information Act, using it for broader societal purposes. In other words, RTI activism does not stand in isolation but is being used as a potent

instrument to improve governance and transparency across a variety of issues, including the Public Distribution System, municipalities, elections, trade unions, genetically modified foods, dams, and the National Rural Employment Guarantee Act.

Cases of particular interest are being culled out and sent for rewriting, to make them more readable from the human interest angle. These will then be compiled into a compendium to be released in January. The RAAG team is also hoping to commission an author to write a novel featuring the Right to Information Act. These case studies will also become the basis for a play on the Right to Information Act, to be performed in January.

## **6. WEBSITE SURVEY OF SECTION 4 COMPLIANCE**

As mentioned earlier, the departmental websites of the 240 state and district level public authorities covered in the urban survey are also being evaluated for Section 4 compliance. This is to ascertain whether Public Authorities have begun to 'pro-actively' report the detailed operational, financial, and service-related information the Act requires of them.

The website survey of all 240 state and district level sample public authorities is now half-way done. One of the major findings of this 'work in progress' is that most Section 4-related information is not found on the website of the public authority itself as would be most logical, but on the State or Central RTI portal. Many websites also have frequent connectivity problems, making it difficult for citizens to use them to find the information they are seeking. There are also significant differences in the quality and depth of websites across States, with some providing extremely detailed and insightful information to citizens, while others provide almost nothing. However, a general pattern is that State Government websites tend to contain more information than District Government websites.

## **7. SURVEY OF RTI COVERAGE BY THE MEDIA**

As mentioned earlier, the People's RTI Assessment is analysing the role that the print media has played as a disseminator and user of the Act. Leading newspapers and magazines in over ten states (Bihar, Goa, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Uttarakhand, Tamil Nadu), as also in leading national English and Hindi publications, are being analysed. Each state analysis is being undertaken by a partner organisation or individual.

This national analysis of the media is intended to answer the following questions:

- How much coverage have different publications given to RTI-related issues and cases?
- What role have different publications played in raising public awareness about the RTI Act and its use?
- What tone and approach have different publications assumed vis a vis the RTI Act?

- Have newspaper, magazines and other publications used the RTI as a tool for investigative journalism, and have they found it useful?
- What does the Indian media establishment (i.e. owners, editors and journalists) think of the RTI Act?
- Has the Indian media establishment begun to internalise the RTI in letter and/or spirit by enhancing the transparency of their own functioning?

Additionally, State partners are collecting clippings of all RTI coverage in their states, and RAAG intends to upload this entire collection onto a national People's RTI Assessment portal.

*Status* – This analysis is now half-way done, and State partners are beginning to send in the first draft for their analysis reports. From a cursory review of these, it appears that RTI coverage of the media is not as intense as might be assumed, and that many journalists are still learning how to use the RTI for investigative purposes.

State media survey consultants will now begin the process of interviewing editors, journalists, and media house owners to determine their perceptions about the RTI and its potential impact in India. The final analysis report should be complete by late December 2008.

## **8. RTI AND THE COURTS**

This component is compiling data on court cases in which appellants have challenged State or Central Information Commissions. Analysis is being driven by the following questions:

- 1) What types of CIC and SIC rejections are being taken to the High Court and to the Supreme Court?
- 2) What types of appellants are tending to do this?
- 3) How quickly is the higher judiciary resolving these cases?
- 4) Have judicial rulings, by and large, upheld the spirit of the RTI? In which cases have judicial rulings tended to be in favour of appellants, and in which against?
- 5) Has the referral of such cases to the court influenced the offending public authority to provide requested information, even there is a judicial ruling?

## **PRELIMINARY FINDINGS**

*Status* – This analysis has commenced with a review of RTI cases in the Delhi High Court. Since many of the appeals heard by the Central Information Commission are referred to the Delhi High Court, this makes it potential representative of the RTI cases being heard by other High Courts as well. Additionally, many Delhi Right to Information Act cases are currently also lying before the Delhi High Court.

While 18 RTI cases have been located in Delhi High Court records so far, only 15 of these have been selected for examination for analysis for the Interim Report. These were filed before the Delhi High Court and Supreme Court of India from 2006 to 2008.

In most of these cases, the applicant – and not the Government – has taken the case to Court. Only in four cases has the Union of India (UOI) approached the Courts. Even though the sample size is small, a preliminary analysis reveals that the Courts have shown sensitivity by admitting Writ petitions that challenge the decisions of the Central Information Commission. However, it must be pointed out that it is premature to comment upon the normal outcome of such cases given that very few have as yet been decided.

But given the way cases have been progressing, it can be inferred that many RTI cases are pursued much like regular cases, in a “run of the mill” manner. In one pending case, in which the applicant sought information about the responsibilities of MCD officials charged with cleaning public places of a certain village of Delhi, the judiciary has ignored the public cause involved and MCD threats to the applicant and his family. The case has lain before court for more than 1.5 years.

However, in other cases, landmark judgments have been made, and that too expeditiously, pointing to the beginning of systemic change in the judiciary's approach to RTI. One such is the *Bhagat Singh vs. CIC & Income Tax Department of Dec 2007*, in which the judgement is liberal. It interprets the exemption to information disclosure under Sec 8 (1) (h) that disallows disclosure on the ground that “information which would impede the process of investigation or apprehension or prosecution of offenders”. The judgment is particularly important as it sets a precedent and strongly supports the spirit and underlying principles of the Right to Information Law. Further the judgment was delivered within 8 months of its filing.

## **9. RTI AND INTERNATIONAL DONORS**

**Background:** While international donors<sup>4</sup> fund social, infrastructural, and institutional capacity-building activity, they have historically only been required to report to the Indian Government. Resultantly, citizens often have little information or say in how these programmes work or the impact they have.

This component of the study is studying donor disclosure policies to understand what kinds of information they require donors to share directly with the Indian public, how these policies compare with the requirements that the Right to Information Act places upon Indian public authorities, and how the Right to Information Act is shaping donor thinking on this issue. The analysis will also examine donor disclosure policies in practice, and whether donors are sharing the maximum information permissible or just their minimum requirement. Also being studied is donor spending on RTI programmes in

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<sup>4</sup> This includes both multilateral and bilateral governmental development cooperation agencies, as also large private charitable trusts and foundations.

India, to understand the manner in which they are attempting to influence the RTI regime in the country.

11 international donors are being studied, including nine of the largest multilateral and bilateral government donors to India<sup>5</sup> (World Bank, Asian Development Bank, Japanese Bank for International Cooperation, GTZ, Russians, United Nations Development Programme, European Union, DFID and USAID) and two of the world largest private grant-giving foundations with operations in India (Bill and Melissa Gates Foundation, Ford Foundation).<sup>6</sup>

Research comprises of a desk review of the public information disclosure policies and practices of the selected international donors, complemented by face-to-face interviews with key stakeholders (including international donors' governance and accountability advisors in India, government officials, beneficiaries, and members of the public).

Research is still at a preliminary stage, although the desk review of information disclosure policies and practices of all donors is now almost complete.

### **Early findings**

UNDP, ADB and World Bank disclosure policies were easily available on the Internet; other donors' disclosure policies were not so easily found

While UNDP's, ADB's and the World Bank's public disclosure policies have undergone a series of iterations, ADB was the first to revise its policy following stakeholder consultations.

With respect to information that is exempt from disclosure:

- UNDP - Broad definition of exceptions
- ADB – well defined list
- WB – everything else apart from documents about WB strategies and programs is denied / discretionary
- UNDP, ADB and the World Bank all provide a list of documents related to their operations (strategies, programs and projects), but only ADB's policy appears to have a presumption in favour of disclosure.

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<sup>5</sup> These organizations have been drawn from the Ministry of Finance's listing of all current external assistance to India, by major donor and project. (This list can be found on [www.finmin.nic.in/the\\_ministry/dept\\_eco\\_affairs/dea.html](http://www.finmin.nic.in/the_ministry/dept_eco_affairs/dea.html) and [www.cdssindia.gov.in](http://www.cdssindia.gov.in)). The listing excludes erstwhile donors that have disbursed no new assistance to India over the past five years.

<sup>6</sup> These two foundations are drawn from the global List of Wealthiest Charitable Foundations, compiled by the Foundation Centre in the United States. While the Bill and Melinda Gates Foundation is the world's largest private donor foundation, with a corpus of US\$ 38.7 billion, the Ford Foundation ranks fourth with US\$ 13.7 billion.