




WEBINAR
ON
“RIGHT TO INFORMATION: PRACTICE AND PROCEDURE”

REPORT OF PROCEEDINGS

ORGANISED BY
CENTRE FOR ENVIRONMENTAL LAW EDUCATION, RESEARCH AND
ADVOCACY, [CEERA]
NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, BENGALURU

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ABOUT THE WEBINAR

The Centre for Environmental Law, Education, Research and Advocacy, NLSIU organized a *Webinar on Right to Information: Practice and Procedure* on 5th of August, 2020. The Webinar dealt with the procedural and practice aspects of the application of the Right to Information Act. The webinar was spread over two sessions and witnessed participation from resource persons with expertise in the field of Right to Information [“RTI”] who deliberated on varied aspects of the implementation of the law ranging from the role of the civil society in the RTI movement, awareness about the Act amongst the citizens in India, measures taken by the state of Goa for the effective implementation of the Act, the role of the Public Information Officer under the Act and the evaluation of the role of the Central Information Commission in India. Some of the other issues touched upon during the course of the webinar included the role of the judiciary in expanding and restricting the scope of the Right to Information and Sri Lanka’s experience with Right to Information, specific learning that the country has taken from India and the similarities and differences between the Indian and Sri Lankan Right to Information Law.



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RIGHT TO INFORMATION: PRACTICE AND PROCEDURE

CENTRE FOR ENVIRONMENTAL LAW, EDUCATION, RESEARCH AND ADVOCACY (CEERA)
NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, BENGALURU

5TH AUGUST, 2020

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SESSION I

SETTING THE THEME - RIGHT TO INFORMATION: PRACTICE AND PROCEDURE

The first speaker of the webinar **Prof. (Dr.) Sairam Bhat**, *Coordinator of CEERA, NLSIU* commenced the session with a brief introduction to Right to Information and the law as it stands it. He spoke about the different facets of the RTI law. Prof. Bhat talked about the need for the government to enforce and strengthen the law on RTI, as part of their governmental functions and duty. With this, he sought to draw a correlation between who is at stake in the backdrop of the framework of RTI and who benefits from it. Setting the theme for the webinar, Prof. Bhat put forth a fundamental question on the applicability to the right to information during the on-going pandemic. Presently, the Indian government, as well as other governments around the world, are in possession of



information relating to the health of their citizens. How far and to what extent can the government be obligated to share information, in this context, was a question that he posed to the participants.

Emphasising on the constitutional and statutory right to information that citizens enjoy, Prof. Bhat, advocated for the responsible and reasonable exercise of such a right. The right to information is an important right that attaches to itself a sense of duty. Thus, it is pertinent for an applicant to evaluate their motivations behind exercising the said right, and also to determine the appropriate time to exercise it by filing an application. A framework that seeks to make the government machinery should not overburden the machinery itself or divert funds and resources unnecessarily.

Prof. Bhat then presented a panorama on what are the good and bad points about the law on the right to information in India. Starting with the positives, the following points were addressed:

- The decentralization of the Information Commission under the RTI Act has enabled the beginning of a new legal order, bringing forward a transparent and an attitudinal shift.
- This increases the scope of accountability of government officials insofar as they are not only accountable to government and the department that they serve, but also to the public at large.
- The Act not only empowers the citizens to exercise their right to information, but also facilitates its exercise through various modes. This goes a long way in reducing procedural constraints and hassles that a citizen may face.
- Of late, there has been a trend of reduction and saturation in the number of departments. This is proof of the success of the RTI framework, evidencing that there is stability in the mechanism, in so far as people are exercising their RTI for core and important issues only.
- The Act provides for a stipulated time frame within which any information sought ought to be delivered. Time is the essence of the RTI framework, which is also an enforceable right. Such a concept is not found or executed in any other legislation, for the time being.
- The Act provides for personal liability of a Public Information Officer for any failure or lapse in their duty. This is one of the root factors for the success of the RTI framework, as it gives necessary push towards the success of the RTI framework due to the fear of punishment.
- The Apex Court has time and again hailed the right to information as a constitutional right. In this context, there is also a sense of acceptance of the right by the judiciary, which promotes the attitude of “practice before you preach”.

However, there is also a flip side to the RTI framework in India, which was explained by highlighting the following points:

- Although the Supreme Court has hailed the right to information, there have also been times when it has curtailed or restricted such right. The Supreme Court, in the case of *Girish Ramchandra Deshpande v. CIC*, in the year 2012, changed the scope of Sec. 8, RTI Act, with respect to employee related information. It held that copies of all memos, show cause notices and orders of censure/punishment, assets, income tax returns, details of gifts received etc. by a public servant are personal information as defined in clause (j) of Section 8(i) of the RTI Act and hence exempted.
- Further in another case before of the Supreme Court, *CIC v. Gujarat High Court*, the Supreme Court held that in matters of seeking information from the judicial machinery, the concerned High Court Rules – The Gujarat High Court Rules, 1992 – would have supremacy over the Right to Information Act. It held the Rules to be an equally efficacious remedy, and not inconsistent with the remedy available under the Act. However, in their reasoning, the Supreme Court failed to consider the multiplicity of mechanisms. Furthermore, under the RTI Act, an applicant need not disclose the need for seeking information. However, the same is not the case under

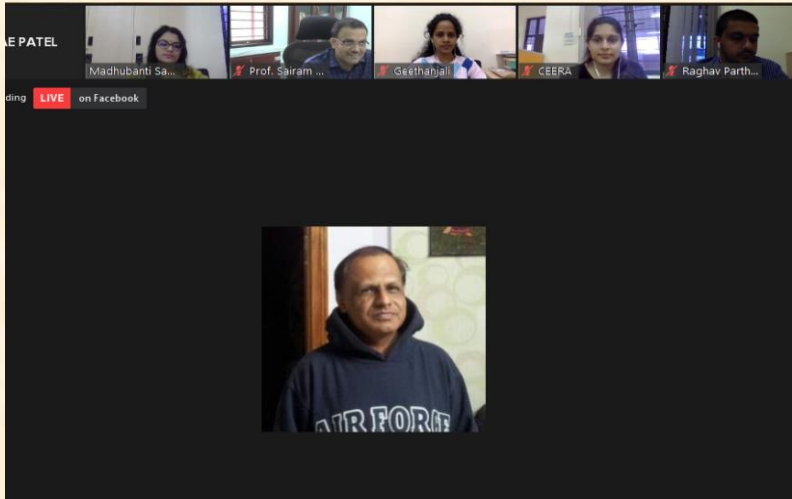
applicable High Court Rules. A Similar decision was also given in the case of *The Registrar, Supreme Court of India v. R S Misra*.

- In furtherance to the discussion on the changing dimensions and perceptions of the judiciary towards the right to information, Prof. Bhat also made reference to the 2019 Office of CJI under RTI case, wherein it was held that the office of the Chief Justice of India comes under the definition of ‘public authority’ in the Right to Information Act, upholding the 2010 landmark judgment of the Delhi high court bringing the CJI’s office under the RTI. “It is crucial to view the judiciary as being equal to law, and not above it”, he said.
- Another shortcoming of the existing framework highlighted by Prof. Bhat is that Information Commission cannot enforce their own judgments and “lack the teeth”. Thus, the government’s accountability under the framework is significantly reduced. A reference to the issue concerning PM CARES Fund was made in this regard.
- Furthermore, there exists a dichotomy in the understanding of “public authority” and “accountability” under the Act. It is seen that political parties and their dependents are generally excluded from the RTI framework. Prof. Bhat argued that such entities ought to realise that transparency lead to better development.
- Appointments of Information Commissioners are mostly bureaucratic appointments which reduces the scope of independence and impartiality.
- There is no scope for automation of information under the Act, at present.
- There is decreasing trend of penalty rate, which necessitates that the ideals of the RTI Act lack entrenchment in the system.
- The inclusion of privacy in the RTI framework has also reduced the effectiveness and accountability of the framework. However, since privacy is a valid issue, Prof. Bhat opined that there is a need to balance the two ideals.

Prof. Bhat was asked during the Question & Answer session on whether courts can allow publication of information in litigation, wherein he addressed the sensitivity of such a step. Further, he opined that Section 4 of the Act is the obligations of the “public authority”. Hence, if the authority fails, it is the authority that should deliver, i.e. collective responsibility would guarantee effective implementation of the RTI. Lastly, Prof. Bhat opined that true success of the RTI framework lies in “proactive disclosure”, i.e. disclosure of information even before it is sought by the public. Such an attitude in the opinion of Prof. Bhat truly embodies the goal of RTI, since RTI applications become a means of last resort.

INFORMATION: EXEMPTED, AVAILED, DENIED

The second speaker for the session was **Mr. Y. G. Muralidharan**, the Managing Trustee, of Consumer Rights Education and Awareness Trust(CREAT). He started his presentation with a discussion on the role of civil society organizations in the RTI movement, who happen to be the major users of RTI for various issues. Mr. Muralidharan noted that civil society organizations ensure the relevance of RTI due to their extensive use of this tool. To elaborate on this point, Mr. Muralidharan referred to



the Adarsh Scam, 2G Scam, etc. where the role of RTI cannot be denied. But he also noted that civil society organizations often use the RTI machinery as a grievances redressal mechanism which results in its misuse.

Mr. Muralidharan then proceeded to explain the exemptions under the RTI Act, as provided under Section 8, Section 9 and Section 24 of the Act. The RTI is not an absolute right, and is subject to being legitimately restricted, denied or curtailed. Such exemptions are provided with an object to harmonize its overall objective of providing access to information to public. Mr. Muralidharan explained the exemptions under Section 8 with the help of decided cases.

- Section 8(1)(a) exempts information that prejudicially affects the sovereignty and integrity of India. The case of *S. C. Sharma v. the Ministry of Home Affairs* was discussed, wherein the CIC upheld the denial of information relating to interception of telephones, stating that such information was classified and indivisible. On the other hand, in the case of *RBI v. Jayantilal Mistry*, the Supreme Court upheld the disclosure of information concerning names of top defaulters of loans and fined and the penalty imposed by banks, as per RBI audits and records. The Court held that such information does not harm the national economy as such, as opposed to information about currency or exchange rates, etc.
- Sub- clause (b) exempts information that may constitute contempt of court. Where a matter is sub judice and no order or judgment has been passed, disclosure is not permitted as the information cannot be said to be held by the Court as yet. Referring to the case of *Joseph v. Sub- inspector of Police* before the Kerala High Court, Mr. Muralidharan noted that it is crucial that the media should be careful and exercise reasonable restraint and caution while publishing court proceedings.
- Sub- clause (c) exempts information disclosed which could cause breach of privilege of Parliament, in consonance with the powers and privileges given to the Parliament and State Legislature under Article 105 and 194 of the Constitution. Thus, in the case of *Sajjan Singh v. SPIO & Ors.*, before the High Court of Rajasthan, copies of certain pages in the Yatinder Singh Removal of Pay Anomaly Committee Report was denied.
- Under sub- clause (d), information which includes commercial confidence, trade secrets or intellectual property which affects the position of third party is exempted. The Delhi High Court, in the case of *Naresh Trehan v. Rakesh Kumar Gupta*, held that information furnished by an assessee for income tax can be disclosed only where it is

necessary to do so in public interest and where such interest outweighs in importance, any possible harm or injury to the assessee or any third party. In another case - *The Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors.*, the Supreme Court of India held that any examination body can disclose the question papers, model answers and instructions in regard to any particular examination as it would not harm the competitive position of any third party once the examination is held. Such disclosure do not affect the right of copyright over the question papers, and institutes are obligated to disclose the standard criteria relating to moderation, if such information is sought by an aspirant.

- Under sub- clause (e), information available to a person in his fiduciary relationship is exempted. The term “fiduciary relationship” as defined under the Act is used to describe a situation where a beneficiary places complete confidence in each other. In the case of *PIO, Jt. Secretary to Governonr v. Manohar Parrikar & Anr.*, before the Bombay High Court (Goa Bench), it was clarified that the relationship between President of India and Governor of State is not fiduciary in nature. Thus, a copy of the report made by the Governor to the President is not exempted from disclosure. Similarly, in the case of *CBSE v. Aditya Bandhopadhaya & Ors.*, the Supreme Court held that an examining body does not hold the evaluated answer books in a fiduciary relationship qua the examiner.
- Under sub- clause (f), information received from any foreign government is exempted, as such information is considered to be confidential. However, Mr. Muralidharan told the participants that this begs the question as to what is the status of information that is given to a foreign country or government? Whether it enjoys the same protection as information received from a foreign government?
- Under sub- clause (g), any information which could endanger the life or physical safety of any person is exempted. It is under this ground that the identity of people who blow the whistle on corruption cases is not disclosed. In the case of *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*, the Supreme Court, setting aside the judgment of the Division Bench of the Patna High Court, held that the BPSC is not bound to disclose the names, designation and address of the subject expert present in the Interview Board, as such disclosure could *ex facie* endanger their lives or physical safety. The possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out, and neither would such disclosure be fruitful much less serve any public purpose.
- Under sub- clause (h), any information which would impede the process of investigation or apprehension or prosecution of the offenders is exempted. In the case of *B. S. Mathur v. PIO*, before the Delhi High Court, it was held that the mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would “impede” or even a lesser threshold of “hamper” or “interfere with” the investigation.
- Cabinet papers are exempted under sub- clause (i), which includes records of deliberations of the council of ministers, secretaries, etc. But when a decision is taken,

such decisions are not exempted, and ought to be disclosed. Furthermore, as held in the case of *Union of India v. Pramod Kumar Jain*, before the Delhi High Court, the exemption under this ground is only for a period of time.

- Under sub- clause (j), information amounting to invasion of privacy of the individual or third party information is exempted. Thus, personal information that has no relevance to public activity cannot be disclosed. Thus, for the disclosure of such information, it should be satisfied that a larger public interest is at stake. The *proviso* to this provision, however, provides that information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

Mr. Muralidharan discussed Section 20 of the Act and presented the circumstances under which the Act provides for certain penalties to be imposed on the PIO such as:

- Refusal to receive an application;
- Not furnishing the requested information within 30 days of receiving the application;
- Malafidely denying the request for information;
- Knowingly given incorrect, incomplete or misleading information;
- Destroying information which was the subject of the request;
- Obstructing in any manner, in furnishing the information

Mr. Muralidharan also pointed out some of the issues relating to Section 20. At the outset, there exists no check on the recovery of penalty. Moreover, penalty is not imposed on all violations under the Act owing to delays and non- response in appeals. Another unique trend is that although the Act envisages personal liability of PIO, it is increasingly seen that departments generally reimburse such penalty. This has resulted in states losing large amounts. Further there is no mechanism to check recovery of the penalty money.

The last limb of Mr. Muralidharan's lecture focused on the transparency in Environmental Matters, advocating for improvement in quality of pro-active disclosures. The EIA needs to be more detailed and understandable to the general public, in order to truly promote the balance of interests. The recent order by the Karnataka High Court was referenced in this regard, which ordered that the EIA should be notified in local language. Furthermore, Mr. Muralidharan also emphasized that air and water quality data must be published periodically, along with the status of the environment, in general. Such disclosure would amount to best practices for the purpose of ensuring transparency. Pertinently, it would promote transparency initiatives on part of extractive industries.

CRITICAL EVALUATION OF THE PERFORMANCE OF THE CIC IN INDIA

Dr. Uday Shankar Mishra, Associate Professor of Law, RGSOIPL, IIT Kharagpur, was the last speaker of Session I. He evaluated the role and performance of the CIC in India. He hailed the RTI, with the CIC at the helm as a democratic approach of a participatory government which empowers its citizens to make the government accountable to them.

The RTI is an attempt to establish and develop a political and liberal democracy. In this context, the institution of the CIC is paramount.



The CIC creates an accountable ecosystem for attaining good governance, and enjoys a certain degree of institutional autonomy. Such autonomy is important as it promises not only transparency but also the attainment of good governance which the constitution promises. The efficacy of the institution lies in its functional independence, which promotes public trust in the institution. It bars any sort of political or executive intervention for effective performance – the government has to take a back seat for good governance sometimes. Such a framework ensures that the aims of the RTI Act can be fulfilled without any bottle-neck to ensure that the informant gets the necessary information sought in a speedy manner. This is a crucial phenomenon especially in situations where information is sought for the purpose of holding the government accountable. Such independence and autonomy then ensures protection of its citizens. At this juncture, two kinds of resources play a significant role – material resources, which include financial independence; and symbolic resources, such as value, hierarchy and ideology that are attached to the office of the CIC.

Coming to the rationale behind the office of the CIC, Dr. Uday Shankar explained that it is envisaged as an alternative path to get necessary information in a speedy manner, which helps avoid the dilatory and lengthy proceedings before a civil court. It is established as appellate machinery with the investigative powers to review and inquire into the decisions of the PIO. There are two ways to approach the CIC, either by way of appeal or by way of complaint, with respect to any deficiency of service or refusal on part of the PIO. Complaints are filed under Section 18 and appeals are filed under Section 19(3)

of the Act. There is no prescribed format for the complaint, and the key is only to indicate the grounds of dissatisfaction with respect to the reply given by the PIO.

Such power includes the power to even determine whether any information is exempted or prohibited under the Act and arrive at the reasonability of the decision of the PIO. Dr. Uday Shankar further noted that the CIC has a right to enquire into the records. Nevertheless the relevant laws prohibit such disclosure, provided such record is under the custody of the public authority. Additionally, the CIC also enjoys power with regard to the appointment of PIO. This is seen as being vital for the success of the framework envisaged under the RTI Act.

With respect to appeals before the CIC, only an applicant seeking information can appeal to the CIC. Right of appeal is not available to the PIO against the order of the Appellate Authority. In an appeal before the CIC, the onus falls on the PIO. Decisions of the CIC are binding, and have the power to impose penalties and order compensation. The CIC, or the State Information Commission, can also impose duty upon the Public Authority to take such steps as would be helpful in securing compliance with the provisions of the Act. The CIC can also order public disclosure of information, in line with the goals of proactive disclosure under Section 4.

Dr. Uday Shankar then moved on to discuss the implications of the 2019 Amendment of the Act. The changes brought about in the quantum of salary are a crucial point. Earlier, the Act provided that the salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively. However, the 2019 Amendment seeks to remove these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government. Such changes however, decrease the hierarchical structure of the institution of the CIC, as well as are opposed to the ideal of cooperative federalism. The discretion that is now vested with the central government to decide salaries and allowance, which is also binding, potentially subverts the original objective and framework of the Act.

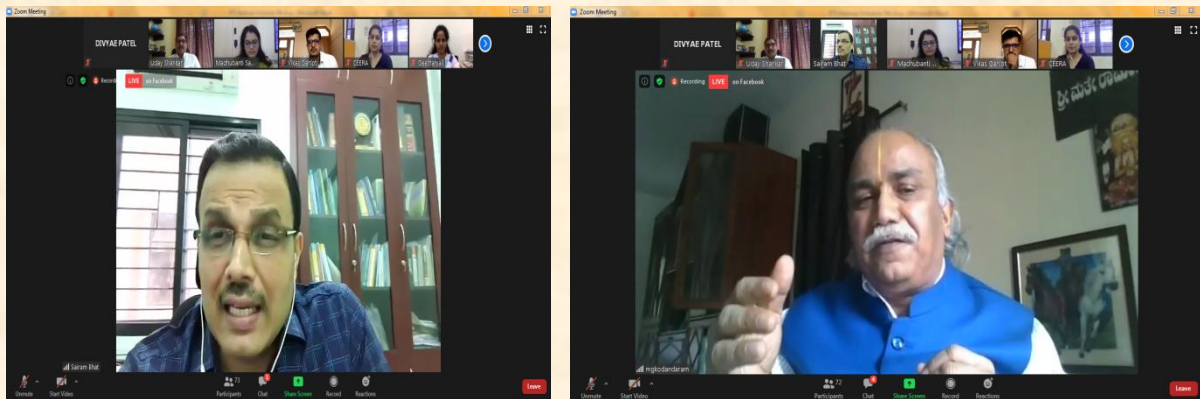
Coming to the functions of the CIC, the following points were discussed by Dr. Shankar:

- To raise public awareness about using the law on RTI;
- To lay down the annual report on the floor of the House - to ensure that there is responsibility bestowed on the CIC to ensure that the RTI framework is checked, and that the CIC can ensure new best practices and evolution of the system. The Annual Report reflects the accountability mechanism of the CIC and the RTI framework, in general;
- To make recommendations for reform, as well as ensure constant and effective implementation of the spirit of the Act.

To elaborate the above, Dr. Uday Shankar stated that “openness in the functioning of the government ought to become the order of the day,” and the CIC has the potential to achieve the same.

Dr. Uday Shankar also highlighted Section 12 and 15 of RTI Act that talks about functional and administrative independence. However, he noted that the practice on ground is not very glorious. The law has not been given effect to in the same manner in which it has been designed. Dr. Shankar recounted the observations of Justice Sikri in the *Anjali Bharadwaj* case where he had expressed dismay on the delay in the appointment of Chief Information Commissioner. The bench said that such delays systematically frustrate the objectives of the Act. Timeline is one of the most prominent features of the RTI Act. It said that the decision shall be based on a defined timeline, but when there is non-appointment of the one who shall be responsible for adhering to the timeline, the whole idea of the Act gets frustrated. Justice Sikri also mentioned that the Commissioner should be appointed from diverse backgrounds.

The participants wanted to know from Dr. Uday Shankar whether Section 4 of the Act can be brought under penal measures. In response to this, he advocated that pro- active disclosure ought to be the norm, which would also help lessen the number applications and litigations, and cater to limitation of resources available to different departments. In this context, he noted that rather than making it penal, or before making it penal, responsible officials ought to be made aware of the cost and benefit. A perspective of minimal individual driven system was necessary.



After the Q&A round, Prof. (Dr.) Sairam Bhat invited Mr. M.G. Kodandaram who shared his views on the RTI Act and the Personal Data Protection Bill. The session was concluded by Prof. (Dr.) Sairam Bhat by thanking all the speakers and expressing his gratitude to Mr. Y.G. Muralidharan, Dr. Uday Shankar Mishra and Mr. M.G. Kodandaram.

SESSION – 2

IMPLEMENTATION OF THE RTI ACT: INTERPRETATION CHALLENGES

The second session commenced with Ms. Madhubanti Sadhya inviting **Dr. Seema Fernandez**, Assistant Director, of Goa Institute of Public administration and Rural development – GIPARD to address the participants. Dr. Seema Fernandez elaborated on the use of RTI Act in Goa and the day-to-day challenges that are faced by the public authorities in Goa. Her presentation was largely based on her interactions with the PIOs and APIOs who have been holding their positions for a long period of time. In the first part of her presentation, she deliberated upon the usage of the RTI Act and the nature of requests that are received by the Public Authorities in Goa under the RTI Act. She told that the RTI applications can be classified in three categories, i.e. Personal issues, Systemic changes and Societal issues. The nature of information sought is diverse,



sometimes people ask for information which helps an individual and sometimes people ask for information which is in the interest of larger public. At the individual level, people try to get their personal issues resolved, and at the systematic level, people use RTI as a grievance redressal mechanism. People try to find out what happened to a particular issue or a particular work. At the Societal level, people use RTI for the larger interest of the public. Then she discussed about the bodies in Goa that receive high number of RTI applications, viz, the Revenue Department, the Panchayats, the Land records and survey department and the Municipalities.

She also shed some light on the provisions of the RTI Act which are often ignored and misinterpreted. Section 2(f), Section 3, Section 6(3), Section 8(j), Section 8(3), Section 7(9) and Section (11) of the Right to Information Act 2005 are generally misinterpreted. Dr. Fernandez noted that Section 4(a)(b) of the RTI Act is the most ignored provision in

Goa as the public authorities fail to maintain all their records in a duly catalogued and indexed manner. She stressed on the need of strict enforcement of Section 4(a)(b) of the Act so that information seeking procedure becomes streamlined and the information can be made available to the citizens in a hassle-free manner. Then she deliberated on the measures taken by the State Information Commission, Goa for strengthening and ensuring the effective implementation of the RTI Act. There are several recent orders passed by the SIC emphasizing on the need to uphold Section 4 of the RTI Act and directing the Public Authorities to fix responsibility for the missing records. The SIC, Goa has time and again recommended for the inclusion of Right to Information as a subject in schools so that the children are also aware of their rights. Moreover, there are number of RTI training and awareness campaigns that are organized regularly by the SIC in association with several NGOs to raise awareness among employees and citizens. While discussing about the areas which require attention for the strengthening of RTI, she laid emphasis on the improvement of infrastructure, strengthening of Section 4, proper record management and strengthening of the SIC, among other things.

Highlighting some of the challenges, which require the attention of various authorities for strengthening the RTI, Dr. Fernandez pointed towards the lack of infrastructure, attitudinal issues of PIOs and Public Authority, misinterpretation of sections under the RTI Act, record management, strengthening of SIC and the absence of clarificatory instructions in certain areas.

Further, she discussed the way forward for the citizen as well as for the Public Authority. The citizens should file RTI applications for public good rather than personal good and they should file it in a clear and unambiguous language so that they can avail the desired response from the respective public authorities. Also, the Public authorities should keep themselves updated with the latest decisions of the SIC and CIC, and work in accordance to it. They should give speaking orders and strive to dispose of the appeals within the prescribed time limits. She even mentioned that the Public Authorities should have thorough and in depth knowledge of the RTI Act and the latest decisions rendered under the RTI Act. They should strive to put most sought after information in the public domain considering the exemptions.

While concluding her presentation, she listed down two key decisions of the SIC, Goa which were focused on the strengthening of the RTI Act. In the first case i.e. *Appeal no. 06/2020, PIO, Police Dept.* information was denied to applicant stating that he is a foreign national as he was having a Portuguese passport. The SIC stated that information has to be provided as there is no evidence that the applicant had denounced his Indian citizenship. In the second case i.e. *Appeal no 244/2018/SIC-II- Assets and liabilities- PIO and FAA, Institution of Goa Lokayukta*, information was denied to applicant on the grounds that the information is personal information and there is no public interest proved by the appellant.

ROLE OF PIOs UNDER THE RTI ACT

Dr. Shaber Ali, Associate Professor of Law, Coordinator P.G. and Research Centre, V.M. Salgaocar College of Law, Goa was the second speaker in the second session of the webinar. Dr. Shaber Ali commenced his presentation by giving a brief outline of the Chapters of the RTI Act and their objectives. Under the RTI Act 2005, the information which can be availed includes information relating to maintenance and status of Government homes, functioning of Government authorities, decisions taken by Government and any other relevant information which makes the Government accountable. The main objectives of RTI are: empowerment of citizens of India, providing information to all the citizens of India, supremacy of democratic ideals, transparency and accountability.

He then discussed about the historical perspective and the struggle behind the enactment of the RTI Act. He described the types of information that can be sought under the RTI Act and shed some light on the landmark revelations through the RTI Act that led to significant changes in the existing policies, e.g. Bank Fraud cases 2019-2020, expenditure of



Maharashtra's CM on travel, etc. The salient features of the RTI Act such as *suo motu* information were also discussed. Further, he described the persons who are eligible to seek information under the RTI Act. Section 3 of the Act provides that all citizens regardless of their age, gender or

location within the territory of India are eligible to seek information under the Act. However, in the year 2018, the Central Government changed its stand and declared that now the NRIs can also file RTI applications.

Furthermore, he elaborated on the CIC order in which Private Schools were declared to come within the ambit of the RTI Act, subject to certain conditions. If the schools are funded substantially by either the government or any of its functionaries, then the private school will come within the scope and ambit of the RTI Act. He also elaborated on the role and powers of public authorities. Section 2(h) of the RTI Act defines Public Authority. The role of PA is to designate PIOs and APIOs at each sub-divisional or sub-district level. The PIO can seek help from other officers and staff in discharging his duties. A person can apply to APIO, PIO, State Public Information Officer, State Information Commissioner and Central Information Commissioner to receive information. The hierarchy of appeals (in ascending order) includes the APIO/ PIO, the State Public Information Officer, the State Information Commission and the Central

Information Commission. If the appellant is still aggrieved by the decision of the CIC, they he/she can approach the High Court or the Supreme Court for redressal of his/her grievances. Under the RTI Act, the PIO is the most important authority as he is the first person to deal with the RTI application and therefore it becomes quintessential that he disposes the application properly and in accordance with the Act, so that future appeals may be avoided. The PIO is not required to create information, interpret information, solve problems raised by the applicants or provide opinions on the RTI applications. The fee for filing an RTI application is Rs. 10. However, there is an exemption of fee for the citizens belonging to SC/ST/BPL categories.

The time limit to dispose off a particular RTI application is 30 days and if the information concerns the life and liberty of the applicant, then it is 48 hours. The information may be refused if it falls under any of the categories mentioned under Section 8 of the RTI Act and the PIO is required to communicate the applicant regarding the reasons thereof within the prescribed time frame. When a PIO receives an application asking for information of a third party, the PIO needs to request the third party to make a written or oral submission regarding whether the information may be disclosed or not. The third party shall be given a time of 10 days from the date of receipt of notice of PIO. The PIO shall send the copy of submission to the applicant for his reply. Based upon submission time of third party, the PIO shall make a decision and reply to the applicant, such decision shall be taken within 40 days from the receipt of the request for information. Once the PIO takes the decision, he should give a notice of his decision to the third party in writing.

If the PIO fails or refuses to provide information then a penalty of Rs. 250 each day till application is received or information is furnished shall be charged. However, subject to the condition that the total amount of such penalty shall not exceed Rs. 25,000. The SIC may also recommend disciplinary action against the PIO if he refuses to furnish the information. However, the PIO can escape the liability under Good Faith mentioned under Section 21 of RTI Act, 2005. But under Section 21 of RTI Act, the burden of proof is on the POI, the POI needs to prove that his action was in good faith. Dr. Ali discussed two orders of the CIC. On 8th January 2017, the CIC imposed a fine of Rs 25,000 on Delhi University's CPIO for rejecting an RTI application over PM Modi's graduation degree. The said order of the CIC was stayed by the Delhi High Court on the ground of it being "arbitrary" and "untenable in law" as the information sought was third party information. In a similar case before the CIC where request for the inspection of class 10th and 12th school records of Smriti Irani was made, the appeal was allowed and the CIC rejected CBSE's contentions regarding "personal information". This order of the CIC was stayed by the Delhi High Court.

Dr. Shaber Ali then discussed about the time period of record detention by the public authorities. Under the Act, the records need to be retained as per the record retention schedule applicable to the concerned public authority. Furthermore, he explained why the RTI Act cannot be used as a tool to get details of orders or judgements from the Supreme

Court or the High Courts. In the end, he laid down the list of grey areas under the RTI Act which included the following:

- Third party information
- Appointment of PIO
- Liability of Applicant
- Quantum of Information
- Misuse of RTI
- Missing files or non-availability of information
- Passing the buck from one PIO to another PIO
- Instrument in the hands of NGOs and activists
- Conspiracy between authority and applicant
- Collection of Information
- Political and bureaucracy nexus
- Harassment of PIO
- No liability of FAA
- Enforcement of the orders of the SIC

Dr. Ali suggested that there is a need to amend the RTI Act, there is need to impose restrictions on the applicants, there is a need to incorporate penal liability on first appellate authority and there is need to provide basic facility and infrastructure to the authorities established under the RTI Act.

COMPARATIVE LAW: THE SRI LANKAN'S EXPERIENCE ON RIGHT TO INFORMATION: LEARNING FROM INDIA

The last speaker at the webinar was *Ms. Mathuri Thamilmaran, Attorney at Law & Consultant Researcher, Sri Lanka*. She discussed about Sri Lanka's experience with Right to Information with respect to learning from India. Ms. Mathuri started her presentation by discussing the history of drafting of RTI law in Indian and Sri Lanka. In 1990s, the RTI movement in India was as pinnacle of a grassroots people's movement demanding accountability for public spending. As per many researchers, the movement was equally dependent on political environment and networking ability of the movement leaders. The Right to Information was also given judicial recognition under the freedom of speech and the right to liberty. RTI was brought in through Freedom of Information law 2002 which was not operationalized, but in the year 2005 the Right to Information Act was enacted.

The Sri Lankan RTI movement had a beginning similar to that of India, but it was an elite led movement especially by the media organisations in the 90s. It was considered a Civil Society movement. In the year 2003, an attempt was made enact the act, but the efforts failed due to the change in the political regime. But the Right to Information was given judicial recognition into the Freedom of Speech and Expression in the Fundamental Rights Chapter. The Sri Lankan RTI Act was brought in place by a 'Good Governance' regime in the year 2005, it was a 100 day plan. RTI was introduced by the 19th Amendment



to Constitution of Sri Lanka. Article 14A was added in Fundamental Rights Chapter. Article 14A states that every citizen has a right to access to information held by enumerated authorities. In the year 2016, the Right to Information Act, was passed unanimously.

There are various similarities between the RTI Act of India and Sri Lanka. The Appeals procedure is similar in the RTI Act of India and Sri Lanka. If a Public Authority does not have the sought information, then it can transfer the application to another Public Authority, the process related to the transfer to another PA is similar in both the Indian and Sri Lankan RTI Act. The rules and regulations of the Sri Lankan RTI Act were drafted by taking references from the Indian RTI Act. The proactive disclosure

regime under Section 4 of Indian RTI Act is considered one of the best in the world. The Sri Lankan RTI Act contains Section 8 which says that it is the Ministers duty to publish reports on specific issues and Section 9 enjoins the Ministers and Public Authorities with the duty to inform public about projects.

The difference between Indian and Sri Lankan RTI regime are:

- Sri Lankan law does not have any exempted institutions but the Indian law exempts the intelligence and security organisations.
- The exemption which talks about the 'information that cannot be denied to parliament' which is present in the Indian RTI Act is not present in the Sri Lankan law.
- Under the Sri Lankan RTI Act there is no procedure to file complaints.
- Under the Sri Lankan RTI Act, the RTI commission can prosecute and fine and imprisonment can be imposed.
- In India transparency officer is appointed in PA to handle appeals and complains following the orders of CIC, but in Sri Lanka there is no such appointment made.
- In India, the Commissioners sit according to portfolio department, they do not sit together, whereas in Sri Lanka there is no such provision.
- In India, the application fee is exempted only for the people belonging to SC/ST/BPL categories, but in Sri Lanka, the application fee is free for all.
- The Information Commissions in Sri Lanka do not make use of video conferencing technology due to which it becomes very difficult for the applicant to seek information as he/she has to travel all the way to Colombo for their hearings.

In her opinion some of the features of the Indian RTI law that could be adopted into the Sri Lankan regime include the appointment of Transparency Officer/Team in Public Authorities to oversee the proper implementation of the Act, the inclusion of privacy clauses for the protection of personal information and the use of online system for streamlining the information disposal system, among other things.

She also highlighted various Indian Supreme Court and High Court judgments from which Sri Lanka has derived learnings. The Sri Lankan RTI commission has looked into Indian cases such as *Union of India v. CIC*. In Sri Lanka there is no data protection law and no right to privacy, Sri Lanka can learn about these things from India. In Sri Lanka there is lack of online system for streamlining requests and appeals, this is something which Sri Lanka could improve by taking learning from India. Sri Lanka could also learn about Proactive disclosure regime from India as India has one of the best proactive disclosure regimes in the world.

Ms. Mathuri concluded her presentation by discussing about the current challenges relating to RTI Act faced in Sri Lanka. Some of the challenges which were mentioned: Change in regime, proposed amendment to remove 19th amendment, fear of dilution of the RTI commission, fear of increased non-compliance of Public Authority with RTI Act and lack of protection of whistleblowers and minors.

The webinar was concluded by Ms. Geethanjali KV who thanked all the panellists individually for sharing their views with participants. Ms. Geethanjali KV also thanked the participants for participating in the webinar and making the discussions interactive by posing pertinent questions to the resource persons.

