

Minutes of Meeting of RTI Activists

A meeting of more than 80 RTI activists from 23 states took place in Mewar Law College, Ghaziabad on 30th and 31st January, 2010 to discuss the issues surrounding RTI Awards.

Some activists like Col Kurup and Major Ravindran from Kerala and Mr Arasu from Tamil Nadu could not attend the meeting but had sent their written comments. Mr Shekhar Singh and Mr Milap Choraria from Delhi attended the meeting for half a day but sent their written comments. All these comments were read out in the meeting.

The following decisions were taken:

General

1. Friends from Andhra Pradesh felt that the information commissioners should just be ranked on various parameters but there should not be any award for them. On the other hand, friends from Himachal Pradesh felt that the awards for Information Commissioners and PIOs were fine, but the citizen category awards should be discontinued. This issue was discussed in detail and the general consensus was that the RTI Awards in all categories were important. However, it was decided that information commissioners should not be given any cash as award, though the best commissioner should certainly be honored.
2. There were demands to create new award categories like RTI pressure group award, RTI cartoonist award, RTI bravery award, RTI journalists award, best RTI governed state, Best First Appellate Authority award, Best Public Authority award, Best RTI advocate, RTI trainer's award, etc. Whereas the importance to start awards in some of these categories cannot be overstated, however, it was decided to start one more category this year, i.e. Best RTI Journalist Award.
3. Some friends suggested that the awards should be named after those RTI activists who died fighting for RTI. However, the general consensus was that we should invite the families of all such activists and the RTI movement should honor their sacrifice and contribution at RTI Awards ceremony but the awards should not be named after anyone.
4. A friend from Manjunath Trust also attended the meeting. He explained that Manjunath Trust had been giving Integrity Awards annually since the past few years, in the memory of Manjunath, to those individuals, who had done exemplary work in fighting corruption. He said that most of the past winners had been RTI activists. Therefore, Manjunath Trust felt that this was leading to duplication of efforts and Manjunath Integrity Awards should be merged with RTI Awards. But most people present at the meeting felt that Manjunath had made a supreme sacrifice fighting against corruption. Merging the two awards would diminish the importance and value of Manjunath's work. It was, therefore, extremely important to maintain a separate identity of Manjunath Award. All RTI Activists present at the meeting expressed complete support of RTI Movement to Manjunath award in terms of logistics, identification of potential nominees etc. It was even suggested that Manjunath Trust

may use the RTI Awards media partners, use PCRFB secretariat and even have a common awards ceremony, if they like. However, the separate identity of Manjunath Award should be preserved.

Formation of RTI Awards Committee

5. It was decided to form an RTI Awards Committee (RAC), which will consist of a few RTI activists from each state. The committee shall oversee, actively participate and encourage participation of activists from across the country in the entire process of RTI Awards.

Information Commissioners

6. Some friends felt that comparing those commissioners who had disposed a few cases in a year with those who had disposed hundreds of cases was incorrect because those who were disposing larger number of cases were bound to have lower public satisfaction levels. Therefore, it was suggested that we should have separate bands for comparisons of Information Commissioners depending upon the number of appeals received by them and the state population. However, many friends opposed this idea. Can higher disposal rate and a higher pendency be treated as a legitimate excuse for lower public satisfaction rates, lower compliance rates and non-imposition of penalties? Sometimes, a higher pendency could be a negative attribute because, in some measure, non-imposition of penalties contributes to higher pendency. If a commissioner does not ensure compliance of his orders because he/she is disposing larger number of cases, it amounts to injustice in almost all cases. Larger disposals become meaningless in such cases. However, the importance of commissioners disposing reasonable number of cases every month cannot be overstated. Therefore, quantity of disposals needs to be combined with their quality, compliance and deterrence. How do we do that? A solution could not be found immediately in the meeting. Therefore, it was suggested that we should capture data on all parameters, prepare combined charts on each parameter and present it to RTI Awards committee for final discussions and decision.
7. Should an Information Commissioner get extra points for creating awareness? There was an overwhelming consensus that it should not be done. It is not the duty of the Information Commissioner to create awareness. It is the duty of state government. Some commissioners, in the name of creating awareness, are seen to be traveling most of the time without attending to their appeals, thus leading to mounting pendencies. Some commissioners, in the name of creating awareness, are also entertaining hospitality of departments, whose cases they are adjudicating. Many participants gave examples of how public authorities are also misusing this practice. They gave examples of how a public authority, when faced heat from a commissioner, invited him to give a lecture to its officers. The commissioner was given a royal treatment by the public authority including expensive gifts. This affected commissioner's orders subsequently.
8. Should an Information Commissioner get extra points for making First Appellate Authority accountable? Many commissioners remand back large number of cases

thinking that this would make the institution of First Appellate Authority functional. However, experience shows that rather than making First Appellate Authorities accountable, remanding back large number of cases leads to huge hardships to appellants as they are just tossed from one authority to another. The RTI Act itself does not give any powers to Information Commissioners to proceed against First Appellate Authorities. But if a commissioner, on his own, recommends disciplinary action against First Appellate Authority without remanding the case back, he should certainly be commended for this.

9. Should there be some norms for qualification of a commissioner to be considered for the award of information commissioner? For instance, in some states, it is seen that the commissioners take long absence from work or are present for very few hours during the day despite huge pendencies. Shouldn't RTI movement express strong disapproval of such practices by disqualifying such commissioners? Harinsh bhai from Gujarat, Karira sahib from AP and Bhaskar from Maharashtra offered to prepare draft norms for consideration of RTI Awards Committee.

Feedback:

10. Last year, the feedback was obtained from appellants only on one point i.e. whether the appellant received complete and satisfactory information after approaching information commission? The unanimous feeling among the attendees was that the feedback from the appellants should be obtained on many more points rather than just one point. It was decided that the feedback form should be drafted after inviting comments from a wide cross section. The RTI Awards Committee (RAC) shall then finalize the same.
11. **Quantum of feedback:** An important issue that came up was - how much feedback should be obtained from the appellants, what should be regarded as a good sample size, how much feedback would be considered adequate? Last year, letters were written to all appellants, in whose cases orders were passed in favor of disclosures. Many of them were also contacted on phone and through emails. Finally, it was ensured that at least 20% feedback was received for each commissioner assessed. In the meeting, many good suggestions were made on this issue. Mr Shekhar Singh suggested that if we write to 100% appellants and consider only those cases where appellants write back to us, there could be a possibility that only those people write back who are disgruntled. Therefore, he suggested that we should take a random sample of say 10% appellants and approach each one of them personally, even if we have to visit their addresses physically, rather than writing to all 100% appellants. He suggested a practical idea to implement this. That we should select any one district (which is representative in terms of illiteracy, backwardness etc) in each state and physically approach all appellants from that district for their feedback. This suggestion was debated at length in the meet. Some of the arguments raised were – this method may throw up warped results if some NGO's or activists are working in the chosen district or if no NGOs or activists are working in that district. Many felt that it looks unlikely that only disgruntled people sent in their feedback because a large number of positive feedbacks had also been received for many commissioners. Also, this is more of an inter commissioner comparative analysis. Bias, if any, would

even out. An overall view was that we should continue sending feedback forms to all 100% appellants. Presently, the feedback was ensured from 20% of the appellants. By involving local groups, we should try and increase this percentage much more next year.

12. **Mode of obtaining feedback:** Last year, feedback was obtained through letters, phone calls, emails, etc. Some people had objected that the feedback should be obtained only through one mode. However, the overall view was that if we were asking the same questions through each mode, then there was no problem in seeking feedback through multiple methods. It was agreed that the most cost effective mix of all modes should be employed.

Parameters:

13. It was decided that we should continue to rank commissioners on each parameter. However, an overall parameter should be calculated by giving weightage to each parameter. The weight-ages should be decided by the RTI Awards Committee.
14. Last year, the data was captured only on penalties. It was decided to capture data on compensations and disciplinary actions also.
15. Mr Shekhar Singh suggested that if part information has been provided by a commissioner in any case, that should be treated as half point. This was accepted.
16. For pro-disclosure factor, we should mention the departments being handled by each commissioner. Some departments are likely to have higher denials. Mentioning the departments would help in partly explaining reasons for higher or lower pro-disclosure factor of a particular commissioner. This was suggested by Mr Shekhar Singh and was accepted.

Qualitative analysis:

17. **Quality of orders:** Orders passed by some commissioners are neither speaking orders nor contain any detail like – what information was sought by the appellant, what information had already been provided, reasons for dissatisfaction of the appellant, justification of the PIO in either denying information or not replying within prescribed time, various dates (like date of application, date of first appeal, date of second appeal, date of PIO's response) etc. It was decided that we should also capture data on each commissioner on quality of orders passed by him.
18. It was decided that wherever information was denied by a commissioner either in part or in full, reasons for denial in each case should be captured.
19. Some commissioner reject large number of cases with remarks “whatever information was available has been provided”. The order does not mention why the balance information cannot be provided – are the records missing, does it need extensive compilation, is the information sought for imaginary and does not exist? It was decided to separately capture the number of cases rejected on such grounds.
20. Some cases are dismissed for completely illegal reasons. It was decided to separately record such reasons. Some such reasons were identified at the meeting:

- If the commissioner allows charging of fee by a public authority in violation of prescribed charges or if collection of fee is allowed even though 30 days are over or if collection of fee is allowed from BPL families.
- When information belongs to some other department and the commissioner, rather than reprimanding the PIO for failing to transfer it under section 6(3), dismisses the case.
- When information is denied on the plea that it is voluminous information. Kerala High Court has said that information cannot be denied on this ground because RTI Act does not mention any such ground for denial. If an appellant is willing to pay prescribed charges, the information ought to be provided.
- When information is rejected saying that it is third party information. Under the law, information cannot be rejected on this ground. Rather the opinion of third party ought to be sought and a speaking order ought to be passed either accepting or rejecting the plea of the third party.
- When information is rejected saying that it is a frivolous RTI. No such ground for rejection is mentioned in RTI Act.
- When information is rejected saying that it is misuse of RTI. No such ground for rejection is mentioned in RTI Act.
- When information is rejected saying that the case is pending in court. Mere pendency of a case is not sufficient ground for rejection, unless the court has specifically barred disclosure of that information.
- When information is rejected by saying that investigations are pending. According to Delhi High Court in Bhagat Singh case, mere pendency of an investigation is not sufficient ground for denying information. Public authority ought to show how disclosure of information would impede investigation.
- When information is denied under section 7(9) – Information cannot be denied under this section. Whereas information in all cases has to be compiled and provided in the form sought, however, if compiling information in such form is likely to divert disproportionate resources of public authority, it may not provide it in the form sought. But information ought to be provided in the form in which it is available with the public authority.
- Many a times, an appeal is dismissed by saying that the appellant is seeking redressal of his grievance. Under section 6(2), the Commissioner does not have the powers to go into the reasons why an appellant is seeking information. Even if a person is seeking information to get his grievance addressed, information ought to be provided. In fact, there is some grievance behind most RTI applications.
- Many times, a case is closed if appellant is not personally present. It is the choice of the appellant whether he/she wishes to be present or not. If the appellant is absent, the case ought to have been decided on merits on the basis of material available on record rather than dismissing it.
- When motivation or intention of the appellant is questioned – As mentioned above, under section 6(2), the Commissioner does not have the powers to go into the reasons why an appellant is seeking information.
- When information is denied because it relates to service matter – RTI Act does not say that information related to service matters cannot be obtained.

- When information is denied because there is no public interest – RTI Act does not say that information which is not related to public interest would not be provided (barring section 8(1)(j))
 - When applications filed by NGOs or other artificial juridical persons is rejected. Now, there are several judgements of CIC and many other commissions that artificial juridical persons can seek information.
 - If complaints under section 18 are returned back on the plea that first appeal has not been filed.
21. It was decided that rejections or dismissals by a commissioner on technical grounds should be separately captured. The reasons for each one of them should also be recorded. This would enable us to know which reasons are being used most by a commissioner in dismissing or rejecting cases. Some such reasons could be – proof of the deposit of fee has not been attached, all papers have not been self-attested, photocopies of all papers have not filed with appeal, first appeal has not been filed (if the case is not rejected on this ground but is remanded back, then it would go under remanded back column) etc
 22. It was decided that five most absurd orders and five best orders (especially in such areas, which are still considered grey) passed by an Information Commissioner should be identified. Mr Shekhar Singh suggested that a page should be created on the website for the people to inform about such orders. This was readily accepted.
 23. We should also capture a commissioner’s stand on the following issues:
 - a. How did the Commissioner deal with cases in which records were reported to be missing, destroyed or lost. Was FIR ordered to be registered?
 - b. How did the commission deal with life and liberty cases?
 24. Friends from AP suggested that we should compare decisions of various Information Commissions on certain important issues. The meeting welcomed and accepted this idea. The issues to be taken up for comparisons would be decided by RTI Awards Committee.
 25. It was also decided to record the practices followed by a commissioner on following issues. Whereas some of this information can be obtained through feedback form, however, capturing most of it would need extensive inputs from activists from each state and would depend upon their cooperation:
 - a. Some case files should be inspected in each information commission to see whether in cases of denial, dropping of penalty and show cause notices – was the PIO’s justification sought or not?
 - b. Whether the commission is perceived to be positively stonewalling local language?
 - c. Does the Commissioner reserve orders in many cases?
 - d. Whether the public is allowed to enter court room openly?
 - e. Sec 4 compliance by that commission
 - f. Identify top 5 practices – both good and bad of each IC
 - g. Any significant registry practices- good and bad
 - h. Whether IC got sec 4 complied with from various Public Authorities?
 - i. Whether the commission takes summer vacation?
 - j. No of working hours of each commissioner per week
 - k. Steps taken by the commissioner to protect RTI activists against victimization

- l. Access of citizen to IC office – how easy or difficult it is?
 - m. Does the commission follow all rules – like in MP, appeals have to be disposed off within 180 days of receipt
 - n. Whether appellants’ written submissions are considered if the appellant does not attend a hearing
 - o. Whether Commission has proper norms as required under section 4(1)(b)(iv)
 - p. IC’s background
 - q. Whether some departments like Chief Minister’s Office or Chief Secretary’s Office or Governor’s office are dealt differently by the Commission?
 - r. Whether the IC is entertaining hospitality of public authorities?
 - s. Commission’s own performance with respect to RTI
26. It was decided that we should also capture as to what reasons forwarded by PIOs, in response to penalty show cause notices, were treated as “reasonable” by Information Commissioners. Such reasons should be highlighted and compared across commissions.

Other issues pertaining to Information Commissioners:

- 27. It was decided that we should obtain copies of all complaints received against various Information Commissioners. These should be studied and considered during final evaluation.
- 28. It was decided that we should also find out the number of orders of an information commissioner challenged in courts and how many of them were reversed.
- 29. In some states, cases are returned by the Commission’s staff without putting them across to the commissioners for hearing, by raising various objections. It was decided to capture this data.
- 30. We should also make a mention about the number of staff and financial resources available with each commissioner. This would help us in comparing across states on what could be treated as legitimate staff requirements and comparing within commission, cost per case of an information commissioner.
- 31. In some states, several hearings take place in each case. This not only tires out an appellant but also leads to attrition. Therefore, the number of hearings per case should also be recorded.
- 32. It was decided that Information Commissioners should be requested in each state and at the centre to allow video recordings of their proceedings. Those who allow such recordings should be appreciated for adopting such transparency measures.
- 33. It was suggested that the study should finally identify 5 issues affecting RTI at national level. This suggestion was accepted by all. This years analysis had also identified two areas of concern at national level- non compliance of orders and mounting pendencies.
- 34. It was decided that the draft report on performance of Information Commissioners should be presented to the RTI Awards Committee. The same should be released after discussions and finalization by the Committee.

Citizens' category

35. We should pay our respects to all RTI activists who have been victimized or assaulted. They, along with their families, should be invited to RTI Awards ceremony.
36. It was decided that activist groups in various states should be actively involved in call for nominations for citizens and PIOs so that nominations are received from farthest of the areas.
37. Citizens nominations should be assessed on criteria such as scale of impact, his struggle, risks involved, how much did that person pursue the issue after getting information, how many people was he able to inspire after that etc. Weightage that needs to be given to each criterion shall be decided by the RTI Awards committee.
38. For citizens, the process of selection shall be as follows:
 - a. PCRf shall do the first reading of all nominations. In first instance, all those cases, where an applicant used RTI for his personal benefit, would be screened out.
 - b. A short summary of each case shall be prepared for the balance cases.
 - c. This shall be sent to each member of the RTI Awards Committee.
 - d. Each member would evaluate each nominee on the above criteria.
 - e. Evaluations of all members of RTI Awards committee shall be compiled and the top 20 finalists will be presented to the jury for final selection.

PIO's category

39. Everyone expressed satisfaction at PIO's selection process. No comments were received on this issue except that local RTI activists should recommend names of good PIOs in large numbers next year.

Jury

40. Should jury consist of RTI activists? Mr. Umesh and Mr. Rakesh from Andhra Pradesh and Mr. Krishnaraj Rao from Maharashtra suggested so. However, the overall view was that RTI activists have their own set of prejudices and biases. Therefore, there should be a completely independent jury comprised of individuals who have proven track records in various fields and not necessarily connected with the RTI legislation or its technicalities. The decisions to be made by the jury should be based upon an unbiased analysis of the data. Everyone appreciated that the present set of jury members enjoy great credibility in their own fields of expertise. Therefore, the present set of jury members should continue. However, we can add a few more members to the jury, who had been working for democratic rights. Such names will be decided by the RTI Awards committee subsequently.

Federation of RTI Appellants

41. There was a very strong demand for the formation of some sort of Federation of RTI appellants at national level. It could serve the following objectives – to fight for

protection of RTI applicants against victimization, to collectively fight if state or central government makes any policy which is likely to adversely affect RTI movement and to collectively engage with Information Commissions to improve their functioning. Last year's study of information commissions has given us access to the addresses of all RTI appellants in the country. We even have phone nos of some of them. Many activists volunteered that they would call a meeting of all RTI appellants in their state and discuss the possibility of forming such an association at their state level. The representatives of such state federations could then form a federation at the national level. It was suggested to have state level appellant meetings by April end.

Mistakes pointed out in last year's report

42. Sunil Mahto from Jharkhand pointed out that Jharkhand Commissioners- Gangotri Kujur and S. D. Mahto had imposed penalties, whereas last year's report erroneously says that they had not imposed any penalties. He even offered to send copies of those orders. PCRf explained that Jharkhand Information Commission had not sent a few hundred orders last year. This error could be due to that.

Finally

43. It was suggested that this study should cover all aspects of RTI Implementation in the country. However, PCRf expressed inability to be able to do it immediately. Therefore, it was decided that this suggestion should be implemented slowly over the years by adding a few components to the study every year.

In the end, the meeting dispersed after paying homage to eminent RTI Activist Mr. Satish Shetty.